IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY.

No. 170, SEPTEMBER TERM, 1887.

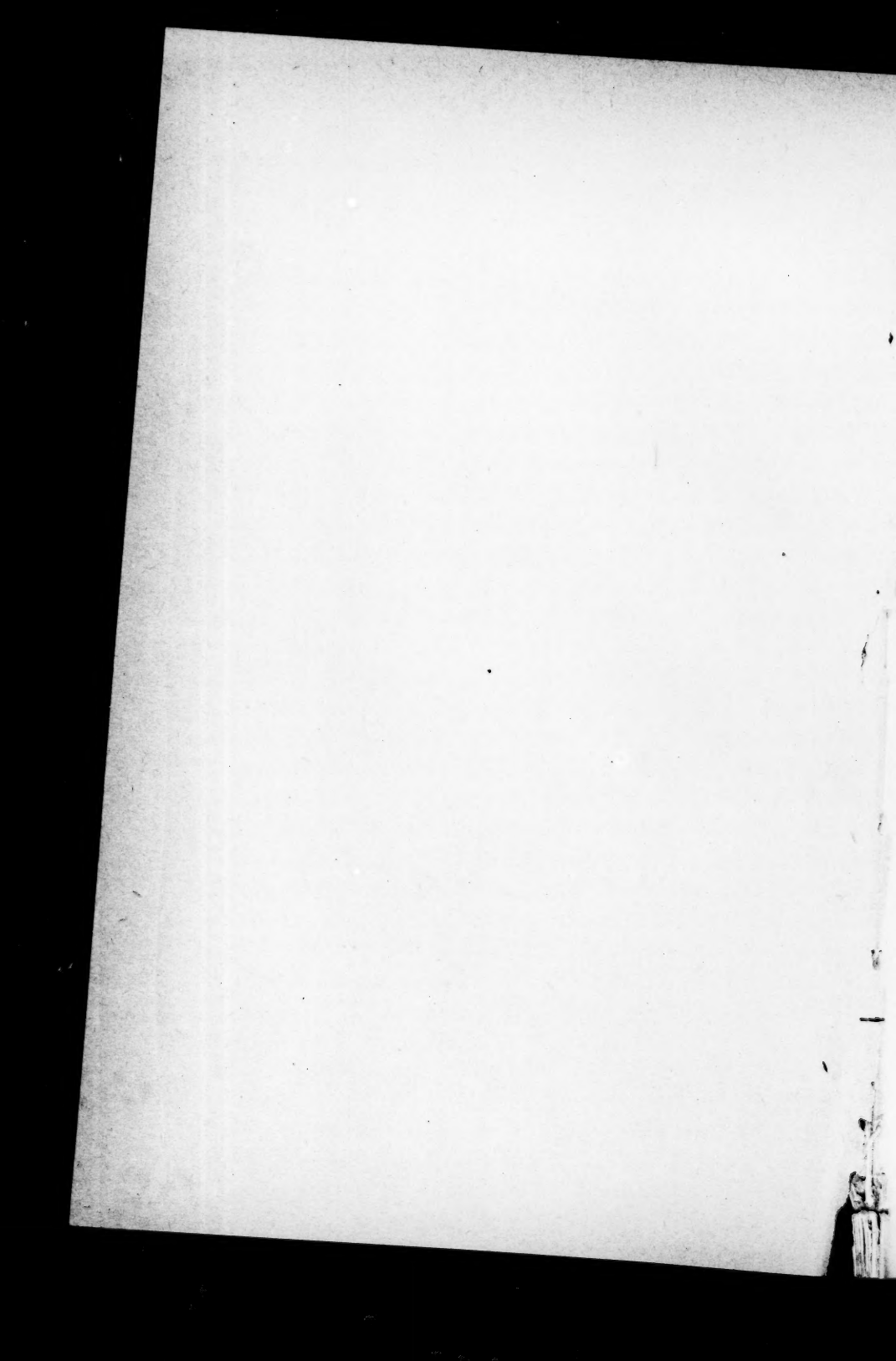
Commonwealth of Pennsylvania

vs.

Delaware Division Canal Company.

Taxation of Corporate Loans.

OPINION OF THE COURT.



IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY.

NO. 170 SEPTEMBER TERM, 1887.

COMMONWEALTH OF PENNSYLVANIA

vs.

DELAWARE DIVISION CANAL COMPANY.

Section 1 of the Revenue Act of 1885, (P. L. 193,) declares that "*all* mortgages, money owing by solvent debtors, whether by promissory note, or penal or single bill, bond or judgment * * * and all other monied capital in the hands of individual citizens of the State, shall be, and are hereby taxable for State purposes at the rate of three mills on the dollar of the value thereof annually." Mortgages issued by individuals, and those issued by corporations not doing business in this State, are, when held by citizens of the State, to be returned to the local assessors, who are, by the act of 1841, required to assess and tax them "according to the actual value thereof, and at such rates and prices for which the same would separately *bona fide* sell." But mortgages issued by corporations doing business in Pennsylvania are required to be assessed and taxed by the treasurers thereof upon their nominal or par value, the tax to be deducted from the interest paid to the holder of the bond or mortgage, it appearing from the evidence that the nominal or par value of corporate loans is no certain measure of their actual value, which is sometimes much higher and sometimes much lower, some interest-bearing bonds selling as low as fifty cents on the dollar, and others as high as one hundred and fifty.

Held, Upon the authority of *Com.* vs. *Lehigh Valley R. R. Co.*, *104 Pa.*, *89*, that the tax imposed by section 1 of the act of 1885 of "three mills on the dollar of the value" of the taxable subjects is a tax upon the actual cash value thereof.

Questioned, Whether an assessment of the tax upon the par or nominal value is such an application of the rate to the value of the property as would amount to a valid tax, such an assessment not being the result of the exercise of the judgment of the person making it, but merely an arithmetical calculation made in obedience to the mandate of the law. But even assuming such an assessment valid,

Held, That if all mortgages, &c., including corporate loans, are, by the act of 1885, embraced in the same class of subjects, section four of the act, inasmuch as it results in a discrimination between mortgages issued by corporations doing business in this State, and those issued by individuals or by corporations not doing business in this State, but owned by citizens of the State, is in violation of that clause of the State Constitution which requires that "all taxes shall be uniform

upon the same class of subjects within the territorial limits of the authority levying the tax."

Held, That, treating corporate loans as a class by themselves, the same want of uniformity exists; those issued by foreign corporations, of which large amounts are owned in this State, being taxable at their actual cash value, as fixed by the local assessors, while those issued by corporations doing business in Pennsylvania are to be assessed at their nominal or par value.

Held, That even treating the loans of corporations doing business in Pennsylvania, and covered by section four, as a distinct class by themselves, the same lack of uniformity exists as under the facts, the necessary working of the law is such that the owner of these loans, to the value of $10,000, may pay a less amount of tax than another whose holdings are only worth $5,000. Therefore,

Held, That the act cannot be construed in harmony with the constitutional mandate as to uniformity of taxes by adopting any possible system of classification, and it is, therefore, as to section four, unconstitutional and void.

There was offered the testimony of several prominent bankers and brokers, all of whom testified that the par value of corporate loans is not, in commercial transactions, considered as any reliable criterion of their actual value, which depends upon various conditions, such as the value of the property mortgaged, its earning capacity, the rate of interest, &c. Also the records of the New York and Philadelphia Stock Exchanges showing sales of all the bonds there listed, very few of which sales were at par, and many of which were above and many others much below par, it frequently happening that in the case of a single company its various loans differed materially in actual values, as for instance, the New York, Lake Erie and Western Railroad Co. having fifteen different loans, varying in value from 75 to 140, and the Philadelphia & Reading R. R. Co.'s numerous loans, selling variously from 14 to 127.

JNO. F. SANDERSON, *Deputy Attorney General*, and W. S. KIRKPATRICK, *Attorney General, for the Commonwealth.*

M. E. OLMSTED, *for Defendant.*

The following opinion was filed April 23, 1888:

By the Court:

This case was tried by the Court as provided by the Act of April 22, 1874.

It originated in an account settled May 20, 1887, by the Auditor General and State Treasurer against defendant for "tax on

scrip, bonds, and certificates of indebtedness," from which settlement defendant entered an appeal to this Court, as authorized by the Act of 1811, relative to public accounts.

We find from the evidence the following facts:

1. The Delaware Division Canal Company, defendant, is a corporation of the State of Pennsylvania, chartered in 1858, and having authority to borrow money, issue bonds, and secure the same by mortgage.

2. In pursuance of this authority, defendant has issued bonds secured by mortgage to the amount of $800,000, all of which were outstanding during the year ending with the first Monday of November, 1886, and were held as follows:

By non-residents of Pennsylvania,	$100,000 00
By residents of Pennsylvania,	285,000 00
By the Lehigh Coal and Navigation Company, a corporation of the State of Pennsylvania,	306,000 00
By other corporations of the State of Pennsylvania,	109,000 00

3. No interest was paid upon the $306,000 of bonds held by the Lehigh Coal and Navigation Company, nor was any due or payable. By the terms of an agreement of lease between the two companies, those bonds are not to bear interest until the termination of the lease. Upon the remaining $494,000 of bonds interest was paid upon the first days of January and July, but the company, denying the validity of the 4th section of the Act of 1885, did not deduct and pay into the State Treasury the State tax of three mills, as required by said section.

4. The nominal or par value of bonds and mortgages issued by corporations is no certain measure of their actual value which is often either above or below their par value; the actual value being dependent upon the value of the property mortgaged, the rate of interest, the date of maturity, and other conditions, some bonds upon which interest is regularly paid selling as low as fifty cents on the dollar, and others as high as one hundred and fifty. The actual and par values of mortgages issued by individuals agree more nearly than those of mortgages issued by corporations.

5. There are owned by residents of Pennsylvania large amounts of bonds and mortgages issued by foreign corporations not doing business in this State, and not subject to the provisions of the 4th

section of the act of June 30, 1885, but taxable at their actual value under the 1st section, the actual value of some of which bonds is much above, and others much below, their nominal or par value.

6. The settlement appealed from is, as stated therein, based upon section 4 of the act of June 30, 1885, (P. L. 193.) Tax is charged therein upon all the bonds of the company defendant except the one hundred thousand held by non-residents of the State.

We think a brief history of prior legislation, similar to that now before us, and of judicial decision thereon, will aid us to understand and determine the questions involved in this case.

The act of June 30, 1885, on which the settlement of account and claim for taxes in this case is based, is a second supplement to the act of June 7, 1879, entitled "An act to provide revenue by taxation," the first supplement being the act of June 10, 1881. The taxing sections of these three acts are substantially identical, and are in effect the same as the taxing section of the act of April 29, 1844. They all tax, among other things, "mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment;" the acts of 1844 and 1885, at the rate of three mills on every dollar of the value thereof; and the act of 1879 and 1881 at four mills.

Under the act of 1844, and other tax laws in force, the tax on the mortgages and evidences of indebtedness of railroads and other private corporations, which we shall hereafter in this opinion style corporate loans, was levied, assessed and collected by the same officers, process and machinery as other State and county rates and levies. The several assessors were required to value them as all other objects of taxation, "according to the actual value thereof, and at such rates and prices for which the same would separately *bona fide* sell." (Act May 5, 1841, P. L. —.)

An attempt was made by the act of 1879, to change the mode of levying the tax on corporate loans. After exempting them from taxation, except for State purposes, it enacted that "All corporations paying interest on loans hereby taxed for State purposes only, shall deduct the said tax from the said interest and pay the same into the State Treasury."

To this provision was added, in section 2 of the act of 1881, a clause requiring the corporations to report annually in the month of November, the amount of indebtedness upon which they had paid interest.

Accounts having been settled against numerous corporations, under these acts, for tax on corporate loans for the years 1880 and 1881, appeals were taken by the corporations to this Court, when it was contended on their behalf that as there was no means of assessment provided by the acts, it was still the duty of the local assessors, in making the assessment for the years in question to value and assess corporate loans with the other subjects of taxation in the hands of their owners. That in discharge of this duty the assessors, acting as officers of the Commonwealth, had made such assessments and had made due and proper returns thereof, which had been accepted and acted upon by the revenue officers of the State, and, therefore, it must be assumed that they had performed their whole duty in the premises, and that their returns were full and true, not only as to all classes of subjects, but also all objects taxable is said classes, including these loans, and that, therefore, the tax upon them must be presumed to have been collected by the ordinary mode of collecting State and county taxes.

This Court found the facts to be as claimed, and decided that the necessary conclusion of law was that the tax had been paid and therefore entered judgment for defendants, and on writ of error to the Supreme Court this judgment was affirmed. (*Commonwealth* vs. *Lehigh Valley R. R. Co., 104 Pa. St., 89,*) decided October 2, 1883.

Thereupon, at the next session of the Legislature, the act of June 30, 1885, was passed, as a further supplement to the act of 1879. In it no change was made in the subjects of taxation, but the rate is changed from four mills to "three mills on the dollar of the value" of the taxable subjects annually. And in section 4 it is made the duty of the treasurer of each private corporation, on the payment of interest on its indebtedness to residents of the State, "to assess the tax imposed and provided for State purposes upon the nominal value of each and every said evidence of debt," while section 6 provides that corporate loans and indebtedness shall not be returned to, nor assessed by, the local assessor.

Accounts having been settled against numerous corporations under section 4 of this act, appeals have been taken, and one of these is now before us.

It is obvious that the defense set up in the case above referred to, cannot be interposed in this, for as we have seen section 6 of the act withdraws corporate loans from the jurisdiction of the local assessors, and there can therefore be no presumption that they have been assessed in any other mode than that prescribed by section 4 of the act of 1885.

But the defendants contend that the settlement now in question is illegal and invalid because (among other reasons) section 4 is repugnant to the clause of the Constitution of 1874, which ordains that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." The argument is that the taxing section of the act subjects all the taxable subjects therein designated, including corporate loans, to a tax of three mills on the dollar of their value; that all the other subjects are valued and taxed according to such value by the local assessors, while corporate loans are, without being valued and assessed, taxed at their nominal value. And it is averred, and we have found as one of the facts in the case, that their nominal value is no certain measure of their actual value, which is often much greater, and often much less; so that in many instances the tax is much more, and in many others much less, than it would be if imposed upon the actual value of each several taxable subject.

To appreciate correctly the force of this argument, we must understand clearly the nature of the tax in question. This we can readily do from the decision in the case referred to above. It is there demonstrated that it is a tax on property, and that when this property is made taxable at three mills on the dollar of its value, its actual cash value is intended.

But, if it is a tax on property, it cannot be levied without an assessment. And if the property is taxable at a given rate upon its actual cash value, the assessment must include a valuation.

A valuation "is a necessary part of every assessment of taxes which is governed by a ratio or percentage. There can be no rate or percentage without a valuation." (Mr. Justice Miller in *People* vs. *Weaver, 100 U. S., 545.*

"Of the necessity of an assessment no question can be made. Taxes by valuation cannot be apportioned without it. Moreover it is the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follows it. Without an assessment they have no support, and are nullities." (Cooley, Const. Lim., 259.) "The tax of a citizen is the result of the rate applied to the value of the property which he owns, and he is not taxed until the rate is thus applied by some legal mode of adjustment, no duty of payment arises, no proceeding to collect can be sustained until the tax is thus created.". (*Commonwealth* vs. *Lehigh Valley R. R. Co., supra p. 101*, per Clark, J.)

It was no doubt the judgment in this case which led to the insertion in the act of 1885, which, as we have seen, is a supplement to the act of 1879, then before the court, of the provision in section 4, making it the duty of the treasurer of corporations, on the payment of interest to residents of the Commonwealth, "to assess the tax imposed and provided for State purposes"—which is the tax imposed by section 1 of the act—upon the nominal value "of the corporate loan."

Bearing in mind that the tax in question here is by the express terms of the act imposing it, a tax of "three mills on the dollar of the value" of the taxable subjects, and that this means actual cash value, it might well be questioned whether an assessment of the tax "upon the nominal value of each and every said evidence of debt," is such an application of the rate to the value of the property, as would amount to a valid tax, especially when such assessment is not in any respect the result of the exercise of the judgment of the person making it, but merely an arithmetical calculation made in obedience to the mandate of the law.

But let us, for the sake of the argument, assume that the assessment prescribed in section 4, is, so far as the principle of the valuation is concerned, a valid assessment. We have then this state of affairs: All mortgages and loans are, by section 1 of the act, taxable at the rate of three mills on the dollar of their actual cash value, and all of them, except corporate mortgages and loans, are in practice so taxed; while corporate mortgages and loans, which are undoubtedly embraced in the general terms, 'all mortgages and loans,' are in practice taxed at the rate of three mills on their nominal value, which often differs by one

hundred per centum from their actual value, so that the tax is in many cases double, and in others not more than one half the amount it would be if the tax were upon the actual value; with the result that of two persons owning taxable property of exactly the same value, one is taxed twice as much as the other, and this not because of any defect in the working of the law, but as a necessary result of its provisions. And the question to be answered is, are taxes so levied and assessed uniform, within the meaning of that term as employed in the Constitution?

It must be conceded that the uniformity required is not absolute, for as said by Mr. Justice Miller, in *State Railroad Tax Cases, 92 U. S., 612*, "perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system that most nearly attains this is the best. But the most complete system that can be devised, must, when we consider the immense variety of subjects which it embraces, be imperfect. And when we come to its application * * * made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded."

This extract points out very clearly one of the limitations with which the requirement of uniformity must be understood. Taxes are uniform in the sense of the Constitution, when any inequality of burden which results from their imposition is due to the imperfect knowledge or judgment of the persons whose duty it is to assess them.

When, however, the law itself is so framed that it necessarily produces gross inequality of burden, no matter how perfectly it may be administered, it would seem impossible to avoid the conclusion that it violates the mandate of the Constitution.

If some of the subjects of a given class were not taxed at all while others were, there would, of course, be a gross inequality in that the burden would fall on one and not on the other. But this is forbidden by clause 2, of Article IX, which ordains that all laws exempting property—other than certain enumerated subjects—shall be void. Hence if any given class of subjects be taxed, none belonging to that class can be exempted.

The mandate in favor of uniformity in section 1, means more than this. It is not satisfied until the taxes, which are imposed upon all the subjects of a given class, are so imposed that each person owning the same species of property, shall pay the same amount of tax, upon the same value, when that has been ascertained by the proper authority. The values need not, of course, be absolutely the same; but they must be so in the judgment of the official whose duty it is to fix them. When this is done, and when, the rate being fixed, the proportion between values and taxes is constant, theoretical uniformity has been attained; and this is all that is or can practically be required.

But if in one case the value to which the rate is applied is the expression of the judgment of the proper official, and in another a mere arbitrary nominal value, it is in the very nature of the case that the resulting taxes cannot be uniform. There can be no definite proportion between the value of the property of the citizen and the amount of his taxes. And as the findings of fact show, this would be the inevitable consequence of the enforcement of the law in question in this case, no matter how faultless its administration might be. We have, therefore, no hesitation in declaring that if all mortgages, money owning by solvent debtors, whether by promissory note, penal or single bill, bond or judgment, including corporate loans, are by the act of 1885 embraced in the same class of subjects, section four of the act violates the constitutional mandate in favor of uniformity, and cannot be enforced.

Nor would the result be different if we should assume that the class to which corporate loans belong includes the mortgages, bonds and evidences of debt of corporations only. The findings of fact show that there are large amounts of bonds and evidences of indebtedness of corporations not doing business in this State, which are held and owned here. These are by the act taxable at their actual cash value, to be fixed by the local assessors, while the same subjects of taxation, when issued by corporations doing business in the State, are to be assessed at their nominal value. Hence the same want of uniformity which we have condemned above would exist here also, and must come into like condemnation.

But it has been suggested that the corporate loans mentioned

in section 4 form of themselves a distinct class. Let us assume that this is so. Then, under the facts, the necessary working of the law is that a citizen owning these loans to the value of ten thousand dollars, may pay a less amount of tax than another whose holdings are worth only five thousand. The only difference between the working of the law, on this assumption and on the other would be that while in the other cases some of the valuations would be arbitrary, here they would all be so; there in some cases there would be no definite proportion between the real value and the tax, here the want of proportion would exist in all cases.

The conclusion is that the act cannot be construed in harmony with the constitutional mandate as to uniformity of taxes by adopting any possible system of classification, and that it is, therefore, as to section 4, unconstitutional and void.

If this be so, judgment must be in favor of the defendant, and it is unnecessary to return to the question of validity of the assessment, which we therefore leave to be discussed hereafter if it arises.

Nor shall we now consider the other objections to the settlemant which are specified in the appeal. If we are in error in deciding the one to which we have given special attention to be fundamental, the others will appear upon the record, and will have to be passed upon before a final judgment can be entered. We prefer to rest our judgment, at present, upon the objection to the law for want of uniformity in the taxes levied under it.

We have no doubt that the defendant has a legal standing in this appeal, to test the constitutionality of the law and the validity of the settlement under it. While the tax is not imposed upon it, and it is simply required to retain the tax out of interest due and pay it over to the State, it is not, as is argued on behalf of the Commonwealth, a tax collector in the strict sense of the term. The settlement is against it; if it failed to appeal within sixty days after notice the settlement would become conclusive against it; there is no provision in the act for notice to the individuals who must pay the tax, and their rights, probably, cannot be determined in this proceeding; defendant has, therefore, a direct interest in the matter which entitles it to be heard, and if the tax is illegal and unconstitutional, it was under no obligation to retain it and pay it over to the State.

We have not thought it necessary to discuss or cite the cases relied upon by the learned Attorney General and his able Deputy. We do not think anything of authority will be found in them contrary to the conclusion at which we have arrived.

We have therefore arrived at the following

CONCLUSIONS OF LAW.

1. That section 4 of the act of June 30, 1885, is repugnant to section 1 of Article IX of the Constitution of Pennsylvania, which ordains that "all taxes shall be uniform within the territorial limits of the authority levying the same," and is therefore void.

2. That the settlement appealed from in this case is illegal and invalid because the taxes claimed therein, under section 4 of the act of June 30, 1885, are not uniform, as required by section 1 of Article IX of the Constitution.

3. That the defendant in this case has the legal right to interpose the defense of the unconstitutionality of the act, and the invalidity of the settlement made under it.

4. That judgment must be given in favor of defendant.

We therefore direct judgment to be entered in favor of defendant, unless exceptions be filed within the time limited by law.

(Signed) J. W. SIMONTON, *P. J.*

In the Supreme Court of Pennsylvania.

MIDDLE DISTRICT.

No. 28, MAY TERM, 1888.

Commonwealth of Pennsylvania

vs.

Delaware Division Canal Company.

Taxation of Corporate Loans.

OPINION OF THE COURT.

In the Supreme Court of Pennsylvania.

MIDDLE DISTRICT.

ERROR TO C. P. DAUPHIN COUNTY.

No. 28, MAY TERM, 1888.

COMMONWEALTH OF PENNSYLVANIA

vs.

DELAWARE DIVISION CANAL COMPANY.

Filed February 4th, 1889.

CLARK, J.

This case comes here upon an appeal under the act of 1811, from the settlement by the Auditor General and State Treasurer, against the Delaware Division Canal Company, for State taxes on the bonded indebtedness of the company, under the act of 30 June, 1885. The claim of the Commonwealth is for taxes upon that portion of said indebtedness held by resident owners, at the rate of three mills on the nominal value thereof, for the year ending on the first Monday in November, 1886.

The Delaware Division Canal Company, the defendant, as we learn from the findings in the court below, is a corporation of the State of Pennsylvania, chartered in 1858, and and having authority to borrow money, issue bonds, and to secure the same by mortgage.

During the year ending as aforesaid, the defendant's bonds secured by mortgage were outstanding to the amount of $800,000; of these $700,000 were held by residents, and $100,000 by non-residents of the State. The company deny the authority of the Legislature to require an assessment to be made by the treasurer; and, although they made a return of the amount of the outstanding indebtedness, they refused to assess the tax, or deduct it from the interest, as required by the fourth section of the act referred to. The company further contend that by the first section of the act of 1885, *all* mortgages, money in the hands of the solvent debtors, etc., etc., are made taxable at the rate of three mills "on the dollar of the value thereof annually," which is the actual value; and therefore, to create a valid tax on corporate loans, the rate must be applied to the actual, and not the nominal, value thereof, and that the actual value can be ascertained only by assessment in the form of law, upon notice to the holder and with the right of appeal. Their contention is that, in view of the provisions of the first section of the act, the system of taxation provided for in the fourth section, as to corporate loans, is repugnant to that clause of the constitution which provides that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." The argument is that the taxing section of the act subjects all the taxable subjects therein designated, including corporate loans, to a tax of three mills on the dollar of their value; that all the other subjects are valued and taxed according to such value by the local assessors, while corporate loans are, without being valued and assessed, taxed at their nominal value; that nominal value is not a certain measure of actual value, which is often much greater, and often much less, so that, in many instances, the tax upon corporate obligations is much more, and in many others much less, than it would be if imposed upon the actual value.

The case of the *Commonwealth* vs. *Lehigh Valley R. Co., 104*

Penn., 89, which has been much referred to in the argument of counsel, on the subject of assessment, presented a wholly different question from that involved in this controversy. The taxation there complained of was of corporate bonds, under the acts of June 7, 1879, P. L. 112, and its supplement of June 10, 1881, P. L. 99. By the express words of these acts, such securities were made taxable at the rate of four mills "on every dollar of the value thereof," which was the precise basis for assessment of individual property and securities, under the general revenue system of the State, by the local sssessors; the rate only was different. The phrase "every dollar of the value thereof" was held to be the actual value; and as neither the act of 1879 or 1881 made any provision for the ascertainment of the actual value, it was held that they did not constitute an independent scheme for the taxation of corporate loans, but were to be aided by the machinery of the act of 1844; for, as the loans were taxable in the hands of resident owners, at their actual value, a legal ascertainment of that value was essential to the assessments. The tax of a citizen, as we there said, is the result of the rate applied to the value of the property he owns, and he is not taxed until the rate is thus applied by some legal mode or adjustment. It was held, further, that neither the return of the amount of the indebtedness, nor the account settled by the Auditor General thereon, could be taken as an assessment, for neither the corporation nor the accounting officer of the Commonwealth, had any authority to make it. That could not be regarded as an assessment of an *ad valorem* tax, made by a person whose interests were adverse, who was charged with no duty, and was under no oath or obligation; where the real party in interest had no notice, no right to interfere if he had notice, and no appeal.

As there was no other means of assessment provided by law, it was the duty of the local assessors, in making the general assessment, in 1880 and 1881, to value and assess corporate bonds wherever found in the hands of resident

owners, and it was presumed in law that these officers had performed their full duty in the premises.

But, by the act of June 30, 1885, (P. L., 193,) the Legislature has attempted to supply the machinery, which was found to be wanting in the acts of 1879 and 1881 for taxation of corporate loans, and, in so doing, has adopted substantially the system suggested by the 42d section of the act of April 29, 1844, relating to the taxation of municipal loans in the hands of resident holders.

By the first section of the act of 1885, *all* mortgages, money owing by solvent debtors, etc., are made "taxable for State purposes, at the rate of three mills on the dollar of the value thereof annually."

By the fourth section, however, it is provided, "that, hereafter, it shall be the duty of the treasurer of each private corporation, incorporated by or under the laws of this Commonwealth, or the laws of any other State, or of the United States, and doing business in this Commonwealth, upon the payment of any interest on any scrip, bond, or certificate of indebtedness issued by said corporation to residents of this Commonwealth, and held by them, to *assess* the tax, imposed and provided for State purposes upon the *nominal value* of each and every said evidence of debt, and to report on oath annually, on the first Monday of November, to the Auditor General, the amount of indebtedness of the corporation owned by the residents of this Commonwealth, as nearly as the same can be ascertained; and it shall be his further duty to deduct three mills on every dollar of the interest paid as aforesaid and return the same into the State Treasury," etc., etc.

By the sixth section, the obligations of public or private corporations, the tax upon which is required by law to be collected by the corporations from the holder, and paid into the State Treasury, are wholly withdrawn from the general and ordinary processes of assessment by the local assessors.

We are clear in our convictions that, if there is any con-

stitutional authority to impose the tax, under the fourth section of the act, the settlement by the accounting officers was rightly made against the company; the act constitutes the company, or its treasurer as such, the collector of the tax, and, upon failure to discharge the duty imposed by law, the settlement is properly made against the company, whose servant he is, as in case of the default of any other officer of the government upon whom a like duty is imposed. The obligation rests upon the company, but, as the company can only act through its officers, the default of the officer is esteemed the default of the company, and the penalty is visited upon them. The treasurer is designated, in order that there may be no evasion; he has exceptional opportunities to know, and has the power in his own hands to perform the several matters required. This system of collecting State taxes was first introduced under the 42d section of the act of April 29, 1844, where it is applied to municipal loans, and by the act of April 30, 1864, (P. L., 218,) was first extended to the loans of private corporations.

In a number of cases, both before and since the adoption of the present constitution, the court has affirmed the right of the Commonwealth to impose this duty upon corporations, both public and private; *Maltby* vs. *Railroad Company, 52 Penn., 140; Commonwealth* vs. *Phœnix Insurance Company,* argued at the January Term, 1868, and not reported; *Delaware, L. & W. Co.* vs. *Commonwealth, 66 Penn., 69; Commonwealth* vs. *Martin, 107 Penn., 185;* and *Commonwealth* vs. *Lehigh Valley Co., 104 Penn., 89.* In the last case cited, we said, "We can see no constitutional or other difficulty in the way of obliging the officers of corporations, municipal or private, by proper legislation, to assess and collect upon their corporate loans or stocks. This method of reaching subjects capable of successful concealment, and liable to escape the notice of the most vigilant assessor, has for many years been recognized as a valid exercise of legislative power." * * * "The tax is imposed indiscriminately

upon all mortgages, etc., in the hands of the owner or possessor, but the corporation is made the collector of the tax upon the corporate loan. This was the construction put upon the act of April 30, 1864, by this court in the case of *Maltby* vs. *Railroad Co., 2 P. F. Smith, 140,* and the reasons there assigned are equally applicable here." The case of *Maltby* vs. *Railroad Co., supra,* it is true, was overruled in the Supreme Court of the United States, (15 Wallace, 300,) in so far as it recognized the taxation or bonds in the hands of non-resident owners, but to the extent stated, it is still of undoubted authority.

But, assuming the powers of the Legislature to enforce this method of collecting, it is contended that the tax is not uniform on the same class of subjects, and is therefore illegal and void; that whilst *all* mortgages, money in the hands of solvent debtors, etc., are, by the act of 1885, made taxable for State purposes, annually at the rate of three mills "on the dollar of the value thereof," the like obligations of private corporations are to be assessed, at the same rate, upon "the nominal value." The actual value of private or individual obligations for money in the hands of solvent debtors, is, as a general rule, equivalent to their nominal value. Such obligations are not ordinarily put upon or quoted in the market, and therefore have no variable market value as other securities have; on the contrary, the autual value of corporate securities is dependent upon a variety of conditions, independent of the value of the debtor's estate, the fluctuations of trade, the date of maturity, the rate of interest, the amount of competition, and generally upon the stringency of the market and the financial condition of the country. Some of these securities, it is said, upon which interest is regularly paid, sell in the market as low as fifty cents, and others as high as one hundred and fifty cents, on the dollar. And it is argued that, as by the first section of the act of 1885, individual and corporate obligations constitute a single class of subjects for taxation, the act unjustly discriminates between

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them in the 4th section, and that therefore the taxes imposed cannot be said to be uniform upon the same class of subjects.

The first section of the act does indicate certain subjects for taxation at a certain rate, and those may, in some sense, be said to constitute a general class; but the classification of these subjects is extended by the fourth section; one class, consisting of the securities of private corporations, is to be taxed at their nominal value, and the residue (excepting the securities of municipal corporations, which are still taxable under the 42d section of the act of April 29, 1844,) constitute another class, taxable at the same rate, but upon their value, to be ascertained under the ordinary processes of assessment by the local assessor.

The new constitution does not withdraw the power of classification from the Legislature; *Kitty Roup's case, 82 Penn., 211; Kittanning Coal Co.* vs. *Commonwealth, 79 Penn., 100.* Indeed the power is necessarily implied in the constitutional provision to which the fourth section of the act of 1885 is supposed to be obnoxious. The power to impose taxes for the support of the government, subject to the limitations of the constitution, still belongs to the Legislature; the selection of the subjects, their classification, and the methods of collection, are purely legislative matters. When the action of the Legislature with respect to these matters is not repugnant to the constitution it would certainly be a case of the grossest inequality which would call for the intervention of the courts; *Kelly* vs. *City of Pittsburgh, 85 Penn., 170.* It may be conceded, however, that classification should be made according to some reasonable practical rule, drawn from experience, which would prevent a gross inequality in the burdens of taxation. "It must," in the language of Mr. Justice Agnew, "visit all alike in a reasonably practical way of which the Legislature may judge, but within the just limits of what is taxation. Like the rain, it may fall upon the people in districts and by turns, but it still must be public in its purpose, and reasonably just and equal in its distribution, and

cannot sacrifice individual right by a palpably unjust exaction. To do so is confiscation, not taxation; extortion, not assessment; and falls within the clearly implied restriction in the bill of rights." *Washington Ave., 69 Penn., 352.* Absolute equality is of course unattainable; a mere approximative equality is all that can reasonably be expected. A mere diversity in the methods of assessment and collection, however, if these methods are provided by general law, violates no rule of right, if, when these methods are applied, the results are practically uniform. If there is a substantial uniformity, however different the procedure, there is a compliance with the constitutional provisions. *Fox's Appeal, 112 Penn., 353.* Even where there may be some disparity of results, if uniformity is the purpose of the Legislature, there is a substantial compliance. *Hunter's Appeal, 42 Leg. Int., 394; Loughlin's Appeal, 19 W. N. C., 517.* Nor is classification necessarily based upon any essential difference in the nature, or indeed the condition, of the various subjects; it may be based as well upon the want of adaptability of applying to the various subjects the same methods of taxation, or upon the impracticability of applying to the various subjects the same methods so as to produce just and reasonably uniform results, or it may be based upon well-grounded considerations of public policy.

Hence it is that some classes of corporations are taxed upon net earnings, or income—others upon capital stock, the value thereof to be ascertained by their annual dividends, or in a certain event upon the actual value of the shares—others upon their gross receipts—insurance companies upon the gross amount of their premiums—coal and mining companies at a specific sum for every ton of coal mined, etc., etc.

Real estate for taxation has been classified as seated and unseated, and for municipal purpeses may perhaps admit of further classification. *Kitty Roup's Appeal, supra.* Collateral inheritances are distinguished from those that are direct, the former being subject to taxation, the latter not. Foreign in-

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surance companies have been distinguished from domestic companies, and taxed independently and differently; *Germania Ins. Co.* vs. *Commonwealth, 85 Penn., 515.* So trades, professions, callings, and even single men have been taxed by classification, and it has been said that professional men may be classified as physicians, lawyers, clergymen, etc; tradesmen, as merchants, mechanics, etc; and other persons as bankers, manufacturers, etc; and a uniform tax assessed upon each class. *Banger's Appeal, 109 Penn., 79.* Not only have taxes been laid in all these various forms, rated on value, on dividends or profits, on premiums, on net earnings, and on gross receipts, but also, by specific sums on specific articles. The road bed, station-house, rolling stock and equipments of a railroad company, the canal bed, and berme-banks, the locks, lock-houses, etc., of a canal company, the banking house or place of business of a banking company, etc., etc.; are withdrawn from the ordinary processes of general taxation, and are reached in a tax upon the capital stock, which has always been regarded as a tax upon the property and assets. These several classifications and departures from uniformity in methods were intended simply to bring about a just uniformity in results. So places of amusement and the luxuries of life may be taxed in relief of the necessaries; household and kitchen furniture, gold and silver plate, exceeding a certain value, pleasure carriages and gold and silver watches kept for use, prior to the act of May 13, 1887, P. L. 114, were selected from the like articles in trade, and from other articles of personal property, and with money at interest, were subjected to a special tax. Illustrations might be multiplied to show that classification does not depend upon differences in physical nature, or condition of the subjects selected, but upon a variety of considerations.

Corporate obligations, by the fourth section of the act of 1885, are taken out of the general designation of subjects contained in the first, and as a distinct class are subject to a different standard valuation, and the tax to a different

method of collection. There are several reasons why corporate and individual obligations should be distinguished, in classification, not arising wholly out of any essential difference in their physical nature perhaps, but out of want of adaptation in our general tax laws to reach them in the ordinary methods of taxation. They are as a class transferrable by delivery, and therefore capable of concealment. The transactions out of which individual securities originate, in the ordinary course of business for the loan of money, have more or less publicity. Experience has shown that the ordinary methods of valuation as to these do not fail of enforcement, but, in the case of corporate loans, whilst corporate mortgages may be recorded in one city or county, the bonds may be found in the pocket of the holders in another city or county of the Commonwealth.

Experience has taught us that, in the ordinary processes of valuation they are not found; the law generally applicable lacks adaptation to the discovery of this quality of obligations. Moreover their negotiability gives them a commercial quality; a vast brood of bonds is covered by a single mortgage, and as they are issued they fly, from hand to hand, throughout the whole commercial world; it is only upon their annual return, at the interest periods, that their ownership can be ascertained. These securities constitute one of the commodities on sale in the market; they are sensitive in many instances to the conditions which affect the price of stocks. They are subject to great fluctuations, caused by the condition of the money market, or the condition of the country, and sometimes by artificial or even accidental means. Well informed men must differ greatly in their estimate of the value of such property. The stock market exhibits changes in the quotations daily, sometimes hourly. Presumptively, however, the nominal value is the true value of securities yielding and paying interest, and the Legislature has therefore fixed the nominal value or the par value for the purpose of taxation. These peculiarities of

corporate securities, with others perhaps that might be mentioned, arising partly from their nature and properties, and partly from a want of adaptation in our general system to reach this quality of subjects, gives rise to their distinct classification.

The moment we concede the power to classify, we have disposed of the question of uniformity; for then all that is required by the constitution is that the taxes shall be uniform upon the members of a class; *Kitty Roup's Appeal, supra.* Classification for purpose of taxation, as a general rule, is a matter for the Legislature; it is the uniformity of taxation, according to that classification, which is for the courts, and it is plain that the act of 1885, having constituted corporate loans in the hands of resident holders, a distinct class, does not discriminate against any members of that class. The tax is not upon the corporation, it is upon the holder of the corporate bonds, and the holder may be an individual, a partnership, a banker or broker, or a private corporation; the law is general, it applies to all holders. Whether the tax is paid or not, is a matter of indifference to corporations, for if they pay it they may defalk it from the interest. The tax being paid by the debtor, out of the interest he pays to the creditor, we cannot see that there is any ground of complaint, that the obligations are taxed at their face value; the tax is to be deducted from the interest, and the payment of the interest by the debtor himself is presumptive evidence of his solvency. *Commonwealth* vs. *Phœnix Ins. Co., supra.* As to the power of the Legislature, under said circumstances, to fix the face value of the obligation as the value for taxing purposes, we think there can de no doubt. "The right of the financial officers of the corporation," says Chief Justice Thompson, in *Del., L. & W. R. Co.* vs. *Commonwealth, 66 Penn., 66,* "to retain the three mill tax, under the act of 1844, out of the interest payable to loan or bond-holders of the company, under the act of April 30, 1864, without an assessment by the county commissioners, or assessing officers, was

maintained to be undoubted in *Malthy* vs. *Reading & Columbia R. Co., 2 P. F. Smith, 140*, and reasserted in *Commonwealth* vs. *Phœnix Iron Co.*, not yet reported. The question is therefore settled." To the same effect are *Susquehanna Canal Co.* vs. *Commonwealth, 62 Penn., 72; Buffalo & E. R. Co.* vs. *Commonwealth, 3 Brewster, 374;* and *Commonwealth* vs. *Martin, 107 Penn., 185.*

The act of 1844 was the beginning of our present revenue system; the act repealed all laws theretofore passed for levying taxes for State purposes; the methods provided by the 42nd section of that act for assessment and collection of State taxes on municipal bonds, has met the approval of the profession, and has, in all cases, been recognized as valid by the courts. A reference to the cases already cited will abundantly verify this statement. The 4th section of the act of 1885 is a substantial copy of the 42nd section of the act of 1844; its purpose was simply to apply the same system to the taxation of corporate loans. It has proved to be an efficient and just method of collecting taxes upon this class of securities; it is easy of enforcement, and precludes the escape of large amounts of taxable property, which would evade collection in the ordinary methods, and we are of opinion that it is in no way repugnant to the provisions of the constitution.

Although there is some diversity in the methods of procedure, as well as in the standard of valuation in the taxation of individual and corporate obligations, there is in fact no great disparity in results; the difference is more apparent than real. Individual mortgages, money in the hands of solvent debtors, etc., are ordinarily, indeed we think universally, valued at their face. The actual value of an individual mortgage, or of an obligation for money in the hands of a solvent debtor, is presumptively its face value. If the mortgage is bad, or the obligor is not solvent, the debt is not taxable; if, on the contrary, they are good, the common experience of business men is that the face value is the actual value ascertained in the ordinary modes of assessment.

But in *Fox's Appeal, 112 Penna., 337*, it was held that the tax on mortgages, etc., imposed by the first section of the act of 1885, does not extend to such securities held by private corporations; that these are reached by the tax on capital stock, under the act of 1879. The fourth section of the act of 1885, only requires the treasurer of the corporation to assess the tax imposed by the first section, and as there is no tax imposed by that section on mortgages, etc., in the hands of private corporations, it follows, of course, that they are not to be assessed or any deduction made for taxes from the interest thereon.

Foreign corporations exercising their franchises under the laws of other States and countries are beyond the reach of our processes of taxation. We could not require them ordinarily to comply with any such regulation of our law, and therefore they are necessarily excluded from the provisions of the act. Such foreign corporations as are engaged in business in the State might doubtless be required to comply as a condition of their right so to do, but this could only embarrass the action of the local assessor, and upon this ground doubtless they were wisely excluded from the operation of the act.

We are of opinion, therefore, for the reasons given, that the treasurer of the Delaware Division Canal Company was bound to make this assessment and to deduct the tax off the interest paid; the word "of" in the fourth section was doubtless intended for "off;" this is a manifest blunder, and cannot be permitted to change the plain meaning of the Legislature.

According to the findings of the learned judge of the court below, $800,000 of the bonds of the Delaware Division Canal Company were outstanding at the time specified in the return; of these $100,000 were held by non-residents of the State, and $415,000 by corporations of the State of Pennsylvania; the residue, being $285,000, therefore, is all that would appear to be subject to the tax imposed by the first and fourth sections of the act of 1885.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 98.

W. W. JENNINGS, PLAINTIFF IN ERROR,

vs.

COAL RIDGE IMPROVEMENT AND COAL COMPANY.

Brief of Argument for Defendant in Error.

S. P. WOLVERTON,
Counsel for Defendant in Error.

JUDD & DETWEILER, PRS., WASHINGTON, D. C.

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COAL RIDGE IMPROVEMENT AND COAL COMPANY.

Brief of Argument for Defendant in Error.

STATEMENT OF THE CASE.

W. W. Jennings, the plaintiff in error, was the owner of $20,000 of first-mortgage bonds of the Coal Ridge Improvement and Coal Company on the first day of December, 1887. These bonds, with others, amounting to $200,000, were secured by first mortgage upon the company's lands in Northumberland county. There was due on that day $660, six months' interest upon these bonds. On demand made for this interest the company sent to Mr. Jennings a certificate of deposit of $570, being the amount of six months' interest due December 1; less $30 for six months' taxes at 3 mills per annum, which was deducted under the provisions of the fourth section of the act of June 30, 1885. Mr. Jennings returned the certificate, declining to allow the reduc-

tion of 3 mills tax and claiming that the bonds were not worth more than seventy-five cents on the dollar of their par value and that it was unjust to require him to pay a tax on them at their par value, but would consent to a reduction upon the taxes based upon a fair valuation of the bonds.

The treasurer of the company held that the officers of the company had no discretion in the matter under the requirements of the act of June 30, 1885, and, as the State claimed the tax upon the nominal or par value of the bonds, declined to pay more than $570. He then brought suit in the court of common pleas of Northumberland county to recover $600, the whole interest without any deduction for taxes. He recovered judgment in the court below for the full amount of his claim. The case was appealed to the supreme court of Pennsylvania and the judgment of the court below was reversed. The case is reported in 127 Pa. State, p. 397.

The taxes were deducted by the defendant under the provisions of an act approved June 30, 1885, entitled "A further supplement to an act entitled 'An act to provide revenue by taxation,' approved the 7th day of June, A. D. 1879." (Pamphlet Laws of 1885, p. 193.)

The 17th section of the act of June, 1879, the first section of its supplement of June 10, 1881, and the first section of the supplement of June 30, 1885, are substantially the same, so far as relates to this subject, with the exception that by the 17th section of the act of 1879 the tax was fixed at the rate of 4 mills on every dollar of the *value thereof annually*, while under the 4th section of the act of 1885 the tax was fixed upon the *nominal value*.

The following are the provisions of the act of 1879 and the supplements of 1881 and 1885 relating to this question:

Section 17 of the act of June 7, 1879 (P. L. 1879, p. 120): "That all mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond

or judgment, also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, (except notes or bills for work or labor done, and all obligations given to banks for money loaned, and bank notes,) also all shares of stock in any bank, banking or savings institution or company, now or hereafter incorported by or in pursuance of any law of this Commonwealth, and all public loans or stocks whatsoever, except those issued by this Commonwealth or the United States, and all money loaned or invested on interest in any other State, and all other moneyed capital in the hands of individual citizens of the State, shall be and are hereby made taxable for State purposes, at the rate of four mills on every dollar of the value thereof annually." * * *

Section 1 of supplement of June 10, 1881 (P. L. 1881, p. 99): "*Be it enacted, &c.*, That all mortgages, money owing by solvent debtors, whether by promissory note or penal or single bill, bond or judgment, also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, except notes or bills for work or labor done and all obligations given to banks for money loaned and bank notes, also all shares of stock in any bank, banking or saving institution or company, now or hereafter incorporated by or in pursuance of any law of this Commonwealth, and all public loans or stocks whatsoever, except those issued by this Commonwealth or the United States, and all money loaned or invested in any other State, and all other moneyed capital in the hands of individual citizens of the State, shall be and are hereby taxable for State purposes, at the rate of four mills on the dollar of the value thereof annually." * * *

Section 1 of supplement of June 30, 1885, (P. L. 1885, p. 193): "*Be it enacted, &c.*, That all mortgages, money owing by solvent debtors, whether by promissory note, or

penal or single bill, bond or judgment, also, all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, (except notes or bills for work or labor done, and all obligations given to banks for money loaned and bank notes), and all public loans or stocks whatsoever, (except those issued by this Commonwealth or the United States), and all moneys loaned or invested in any other State, and all other moneyed capital in the hands of individual citizens of the State, shall be and are hereby taxable for State purposes, at the rate of three mills on the dollar of the value thereof annually." * * *

Section 4 of the act of June 30, 1885, under which the deduction of the State tax was made by the treasurer of the Coal Ridge Improvement and Coal Company, is as follows (Pamphlet Laws 1885, p. 194): "That hereafter it shall be the duty of the treasurer of each private corporation, incorporated by or under the laws of this Commonwealth, or the laws of any other State, or of the United States, and doing business in this Commonwealth, upon the payment of any interest on any scrip, bond or certificate of indebtedness, issued by said corporation to residents of this Commonwealth, and held by them, to assess the tax imposed and provided for State purposes upon the nominal value of each and every said evidence of debt, and to report on oath, annually on the first Monday of November, to the auditor general the amount of indebtedness of the corporation owned by residents of this Commonwealth, as nearly as the same can be ascertained; and it shall be his further duty to deduct three mills on every dollar of the interest paid as aforesaid and return the same into the State treasury within fifteen days after the thirty-first day of December in each year; and his compensation for his services shall be the same that city and borough treasurers receive for similar services; and for every failure to assess and pay said tax and make report as aforesaid, the auditor general shall add ten per centum as a pen-

alty to the amount of the tax; in payment of said tax by a corporation the bonds, certificates or other evidences of indebtedness issued by it shall be exempt from all other taxation in the hands of the holders of the same."

The plaintiff's counsel in the court below and in the supreme court of Pennsylvania contended that the fourth section of the last-named act was unconstitutional.

The judge of the court below to whom the case was referred sustained the position taken by the counsel for the plaintiff and entered judgment for the full amount of the interest on his bonds without deducting any of the tax.

On appeal the supreme court of Pennsylvania reversed the court below on the strength of a long line of decisions of that court under various revenue laws of the State of Pennsylvania (127 P. S., 397). The action of the supreme court of Pennsylvania is now assigned for error.

Argument.

The taxing power is vested in the legislature of the State without restriction. The designation of the subjects of taxation, their classification, and the methods to be devised for the collection of taxes imposed are subjects for legislative action. There is no requirement that taxation shall be equal and equality of taxation never has been attainable. All that the constitution of Pennsylvania requires is that "all taxes shall be uniform upon the *same class* of subjects within the territorial limits of the authority laying the same."

In Cooley on Taxation (2d ed.), p. 165, it is stated: "The legislature must decide when and how and for what public purposes a tax shall be levied, and must select the subjects of taxation. All this is legislative, and the legislative conclusion in the premises must be accepted as proper and final. It follows that a tax cannot be attacked on aver-

ment and proof that some other tax for the same purpose would have been more just and more equal. An excise tax on one kind of business only is not illegal for the discrimination. It is always to be conclusively presumed that the legislature found good and controlling reasons impelling the action it has taken, and that, in view of all the circumstances which were known to its members, the tax which has been provided for is reasonable."

Cooley's Constitutional Limitations, 4th edition, p. 598, lays down the general doctrine as follows:

"The power to impose taxes is one so unlimited in force and so searching in extent that the courts scarcely venture to declare that it is subject to any restrictions whatever except such as rest in the discretion of the authority which exercises it. It reaches to every trade or occupation, to every object of industry, use, or enjoyment, to every species of possession, and it imposes a burden which, in case of failure to discharge it, may be followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervading and at no point does the power of the government affect more constantly and intimately all the relations of life than through the exactions made under it.

"Taxes are defined to be burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes. The power to tax rests upon necessity and is inherent in every sovereignty. The legislature of every free State will possess it under the general grant of legislative power, whether particularly specified in the constitution among the powers to be exercised by it or not. No constitutional government can exist without it, and no arbitrary government without regular and steady taxation could be anything but an oppressive and vexatious despotism, since the only alternative to taxation would be a forced extortion for the needs of the government from such persons or objects as the men in power might select as victims. Chief Justice Marshall has said of this power: 'The

power of taxing the people and their property is essential to the very existence of government and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation. The people of a State, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of the government cannot be limited they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator and on the influence of the constituents over their representative to guard them against its abuse.'

"And the same high authority has said in another case: 'The power of legislation, and consequently of taxation, operates on all persons and property belonging to the body politic. This is an original principle, which has its foundation in society itself. It is granted by all for the benefit of all. It resides in the government as part of itself and need not be reserved where property of any description or the right to use it in any manner is granted to individuals or corporate bodies. However absolute the right of any individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature. This vital power may be abused, but the interest, wisdom, and justice of the representative body and its relation with its constituents furnish the only security against unjust and excessive taxation as well as against unwise taxation.'

"And again the same judge says it is 'unfit for the judicial department to inquire what degree of taxation is the legitimate use and what degree may amount to the abuse of the power;' and the same general views have been frequently expressed in other cases."

The system provided by the act of 1885 for the assessment of taxes upon corporate and other loans and the method of collecting the taxes are substantially the same as they have been since 1844, and the decision of the supreme court of Pennsylvania in this case is in accordance with the decisions of the court on this subject for nearly a half century.

By the first section of this act all mortgages, money owing by solvent debtors, etc., are made taxable for State purposes at the rate of three mills on the dollar of the value thereof.

By the fourth section it is made the duty of the treasurer of each private corporation incorporated by or under the laws of this Commonwealth or the laws of any other State or of the United States, doing business in this Commonwealth, to assess the taxes imposed for State purposes upon the *nominal value* of each and every evidence of debt. It is also made his duty to report to the auditor general the amount of indebtedness of the corporation owned by residents of the Commonwealth as nearly as can be ascertained.

One of the complaints against the validity of this act is that it does not provide for a proper assessment. An assessment is the application of a rate to the valuation. By the first section of the act the rate is fixed, and the fourth section provides that the assessment shall be made on the nominal value of the obligation. The contention is that the tax is not uniform on the same kind of subjects; whilst all mortgages and money in the hands of solvent debtors, etc., are made taxable for State purposes at the rate of three mills on the dollar of the value thereof (which it is contended is the actual value), the like obligations of private corporations are assessed at the same rate on the *nominal value*. This assumed discrimination between the assessment of the value of mortgages and the bonds of private corporations is theoretical, and no such discrimination results as a matter of fact under the provisions of the act of 1885.

In point of fact the assessor ascertains, not what the mortgage is worth on the market, but ascertains the number of

mortgages held by the person and assesses their face or nominal value, so that in practice the assessment of obligations of private corporations and the assessments of mortgages, money in the hands of solvent debtors, etc., are all made at their face or *nominal value*. The duty of the assessor in both cases is to ascertain the nominal value of all obligations held by the person who should pay the tax. Obligations such as mortgages are not quoted in the market and have no variable market value, while obligations of private corporations may fluctuate and depend upon the stringency of the money market and many other conditions.

The argument of the counsel for plaintiff in error is that individual and corporate obligations constitute a single class of subjects for taxation under the act of 1885, and that the fourth section of the act discriminates between these obligations by requiring an assessment at the nominal value of corporate obligations, and for the purpose of argument assumes that the assessor assesses individual obligations at their actual market value instead of their nominal value, and that therefore the taxes imposed are not uniform on the same class of subjects.

The first section only indicates certain subjects for taxation and fixes the rate for all, but the classification of these subjects does not end with this section, but extends into the fourth. Bonds or obligations of private corporations are there designated as a class to be taxed at their nominal value; all others named in the first section are to be assessed by the ordinary process by the township or local assessors.

The power of classification by the legislature is expressly given by the constitution of Pennsylvania, requiring that "all taxes shall be uniform upon the *same class* of subjects."

This whole subject is fully discussed by Mr. Justice Clark in the case of The Commonwealth *vs.* Delaware Division Canal Co. (123 P. S., 594), in which it is held, "By section, act of June 30, 1885 (P. L., 193), corporate obligations are taken out of the general designation of subjects contained in

section one, and as distinct classes are made subject to a different standard of value and the taxes to a different method of collection."

"The provisions of section four requiring the treasurers of corporations to assess three mills tax upon the nominal value of corporate loans to deduct the same from the interest paid thereon and return it into the State treasury does not violate section one, article nine, of the constitution."

Counsel for plaintiff in error has printed the whole of this opinion and attached it to his brief, being the last pamphlet attached thereto. The whole question is fully discussed also in the case of The Commonwealth *vs.* Lehigh Valley R. R. Co. (129 P. S., 429). Mr. Justice Clark in delivering the opinion of the court on page 454, says:

"This case was brought into the common pleas of Dauphin county upon an appeal by the Lehigh Valley Railroad Company from the account settled by the auditor general and State treasurer for tax on the bonded debt of the company under the fourth section of the act of June 30, 1885 (P. L., 193), for the year 1886.

"Neither party being satisfied with the judgment of the court, it is brought here upon an appeal by the company.

"The company's contention is:

"1. That the fourth section of the act of 1885 is repugnant to paragraph 1 of article IX of the constitution of this State, which provides that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and that they shall be levied and collected under general laws.

"2. That the provisions of the act of 1885 are in conflict with the Constitution of the United States, as follows: First, with paragraph 10 of article L, which forbids the passage of any law impairing the obligations of a contract; second, with article V of the amendments, which provides that no person shall be deprived of his property without due process

of law; and, third, with paragraph 1 of article XIV, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

"3. That in any event the company is not liable for the tax upon its bonds, excepting for that proportion of a year's tax which accrued between December 31, 1885, and the date at which the last payment of interest was due and payable upon the bonds within the year ending first Monday of November, 1886.

"As the matters involved in the first and second questions presented were fully discussed and decided in a very recent case of the Commonwealth *vs.* Delaware Division Canal Co., 123 Pa., 594, it is not necessary now to enter upon any further discussion of them. We are well satisfied that the case referred to was rightly decided, and as this case in this respect is identical in principle, it would be useless to repeat the reasons there assigned for the judgment entered. The opinion filed in the Commonwealth *vs.* Delaware Division Canal Co., *supra*, is confined mainly to a discussion of the question of the alleged conflict of the fourth section of the act of 1885 with the constitution of this State; but the same considerations which prevailed in the discussion of that question were then and are now supposed to be sufficient in the main to establish its consistency with the provisions of the Federal Constitution. In the opinion filed in that case it was our purpose to show that the tax was in the nature of a specific tax, not a tax upon actual value; that the legislature having fixed the nominal value of the bonds as the basis of taxation, no further assessment, properly so called, was required; that it was a proper exercise of legislative power to require the company's treasurer to 'assess' the tax—that is to say, to determine the amount of the company's loans liable to taxation at their nominal value, and to apply thereto the rate

fixed by law, the taxation being the result of the rate thus applied.

"Taxes have been levied and collected in Pennsylvania in this form for more than half a century. The fourth section of the act of 1885 is but a transcript of the forty-second section of the act of 1844, which provides the only method since its passage for the assessment and collection of taxes upon municipal loans. The act of 1844 is still in force, and its validity, until the very recent case of Commonwealth *vs.* Chester City, 123 Pa., 626, has never been disputed. On the trial of cases involving the construction and validity of other statutes differing from that of 1844, this provision of the last-mentioned act has been uniformly and consistently recognized as a valid exercise of legislative power (Maltby *vs.* Reading, etc., R. R. Co., 52 Pa., 140). Specific taxes for a long series of years have been imposed within this State, not only upon particular classes of property, but upon classes of persons, and we have never known the power, when properly exercised, to have been called in question.

"Taxes are generally classified as specific, ad valorem, and for public benefit. The last two classes are necessarily based upon an assessment of actual values, whereas in the first class the valuation is either fixed by statute or the tax is intended to subserve some supposed public interest or policy. 'Of the different taxes which the State may impose,' says Mr. Justice Field in Hagar *vs.* Reclamation District, 111 U. S., 709, 'there is a vast number of which, from their nature, no notice can be given to the tax-payer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business), and generally specific taxes on things or persons or occupations.

"'In such cases the legislature in authorizing the tax fixes its amount, and that is the end of the matter. If the tax be not paid, the property of the delinquent may be sold and he be thus deprived of his property. Yet there can be no

question that the proceeding is due process of law, as there is no inquiry into the weight of evidence or other element of a judicial nature, and nothing could be changed by hearing the tax-payer. No right of his is, therefore, invaded.'

"'Though differing from the ordinary forms pursued in courts of justice, the general system of procedure for the levy and collection of taxes, if not arbitrary, oppressive, and unjust, has always been regarded as due process of law.' (Kelly *vs.* Pittsburg, 104 U. S., 78; Davidson *vs.* New Orleans, 96 U. S., 97.) It is difficult to see how the imposition of a tax upon money at interest can be supposed to impair the obligations of the contract which secures payment. The tax is upon the debt; the debtor is simply the collector of the tax, and his remedy for collection is to defalk it from the interest; this and no more is the legal effect of the statute. The whole question turns upon the validity of the tax, for if the tax is valid the creditor certainly cannot complain of the remedy provided for its collection. The contract is in no sense impaired; the debtor is held for the payment of the whole debt, but upon the exact footing of his contract; he is simply permitted to defalk such part thereof as he has, under legal obligation, paid, laid out, and expended in behalf of the creditor.

"The questions of classification and of uniformity are fully considered in the case of the Delaware Division Canal Company, and we deem it unnecessary to enter into any discussion of those subjects. We are well satisfied with the views there expressed and are unwilling to recede from the conclusions to which they lead. We cannot see that the company has any cause of complaint, grounded either in the provisions of the constitution of this State or of the United States.

"The third branch of this case, covered by the first assignment of error, is wholly without merit. The reasons which we think justify this conclusion will be found fully stated in the opinion filed in the Commonwealth's appeal in the case

of Commonwealth *vs.* The Lehigh Valley Railroad Company, a writ error from the same judgment and argued with this case." (*Ante*, 445.)

Nearly every question raised by the assignments of error in this case have been disposed of by this Court in the case of Bells Gap R. R. Co. *vs.* Pa., 134 U. S., p. 232. Mr. Justice Bradley, in delivering the opinion of the Court in this case, says:

"On the merits we have no serious doubt.

"1. As to the assessment of the tax of three mills upon the nominal or face value of the bonds instead of assessing it upon the actual value: This might have been subject to question under the State laws, but the State courts have upheld the assessment as valid. We are to accept it, therefore, as part of the State system of taxation, authorized by its constitution and laws. Then how does it violate any provision of the Constitution of the United States? It is contended that it violates the first section of the fourteenth amendment, which forbids a State to withhold from any person the equal protection of the laws. We do not perceive that the assessment in question transgresses this provision. There is no unjust discrimination against any person or corporations. The presumption is that corporate securities are worth their face value. Besides, the person that holds them is not affected by the tax unless he receives his interest from which the tax is deducted. So long as the interest is paid the security has to him full productive value; when it is not paid he pays no tax. But, be this as it may, the law does not make any discrimination in this regard which the State is not competent to make. All corporate securities are subject to the same regulation. The provision in the fourteenth amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways.

It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature or the people of the State in framing their constitution; but clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would include all cases. They must be decided as they arise. We think that we are safe in saying that the fourteenth amendment was not intended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction it would not only supersede all those constitutional provisions and laws of some of the States whose object is to secure equality of taxation and which are usually accompanied with qualifications deemed material, but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries and the discouragement of intemperance and vice, and which every State, in one form or another, deems it expedient to adopt.

* * * * * * *

"With due regard to these considerations, we are clearly of opinion that the method of assessing the tax in question on the face value of corporate securities in Pennsylvania

is not violative of the fourteenth amendment to the Constitution.

"2. As to want of notice to the owners of the bonds: What notice could they have which the law does not give them? They know that their bonds are to be assessed at their face value, and that a tax of three mills on the dollar of that value will be imposed, and that they will only be required to pay this tax when and as they receive the interest. If the State may assess the tax upon the face value of the bonds, notice *in pais* is not necessary. We think that there is nothing in this objection which shows any infraction of the Federal Constitution. It is urged that it is taking of the bondholder's property without due process of law. We must confess that we cannot see it in this light. The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain. It involves no violation of due process of law when it is executed according to customary forms and established usages or in subordination to the principles which underlie them. We see nothing in the process of taxation complained of which is obnoxious to constitutional objection on this score. Stockholders in the national banks are taxed in this way, and the method has been sustained by the express decision of this Court. (National Bank *vs.* Commonwealth, 9 Wall., 353.)

* * * * * * *

"We would say, in conclusion, that there are several decisions of this Court which virtually dispose of most of the questions involved in the present case. We refer particularly to National Bank *vs.* Commonwealth, 9 Wall., 353; The Dollar Savings Bank *vs.* United States, 19 Wall., 227, 240; King *vs.* United States, 99 U. S., 229; Hagar *vs.* Reclamation District No. 1, 111 U. S., 701; Davidson *vs.* New Orleans, 96 U. S., 97; Walston *vs.* Nevin, 128 U. S., 578, 581.

"The motion to dismiss the writ of error is denied, and the judgment of the supreme court of Pennsylvania is affirmed."

The counsel for plaintiff in error in this case filed a brief in behalf of W. W. Jennings, plaintiff in error in this case, recognizing that the decision in the case of Bells Gap R. R. Co. *vs.* Pa. would determine the questions raised by the assignments of error in this. Briefs were filed also by other counsel who had similar questions pending on writs of error in this Court. (134 U. S., 240.)

See also Chester City *vs.* Pa., 134 U. S., 240.

In *Maltby* vs. *The Reading and Columbia R. R. Co.*, 52 *P. S.*, 140, the same question was raised as in this. Maltby demanded the full amount of the coupons upon his bonds. The company retained *three mills* from the interest, being the amount imposed as a tax by the laws of Pennsylvania. The plaintiff denied the right of the company to deduct the three mills from the amount of the coupons and filed a bill praying that the company pay the whole amount without deduction for State taxes.

Woodward, C. J., in delivering the opinion of the court says, page 144: "The taxableness of corporation loans depends upon the will of the legislature with whom the taxing power is lodged, and that will is to be gathered from the terms of acts of assembly.

"No impression whatever is made upon such a question by arguing the *unreasonableness* of taxing debts. It may be true that such a policy tends to prevent capital from seeking investment in Pennsylvania, but the argument should be directed rather to the legislature who make the laws than to the court whose duty it is to expound them.

"The objects of taxation as well as the *rate of assessment* are selected and prescribed by the legislature. Corporation loans are very conspicuous forms of property and *depend for*

their existence and value upon the State government which authorizes them, and if in the judgment of the legislature they ought to contribute to the support of the government that protects them, and for this purpose are taxed, it avails nothing to argue that the government ought to derive its support from other kinds of property. *Sic volo sic iubeo* is the language of a sovereign, and in respect to taxation of property within the State the Commonwealth is a sovereign power. Our only question upon this point of the case is, therefore, whether the acts of assembly do clearly manifest the legislative intent to tax this species of property."

Page 145.—"There is no possibility of mistaking the legislative will in this regard. It may be a *reasonable or unreasonable* exercise of will, but that it is clearly expressed is beyond a doubt. *And it is final.* The power of taxation, which is the corner-stone of the Government, is lodged *exclusively* with the legislature, and depends *wholly* on the discretion of that department. A wanton abuse of it might be corrected by the judicial arm." But such an interference could proceed only on the ground that the legislature had transcended their legislative functions and enacted something more than a tax law. So long as they confine themselves to that which is in the *nature of a tax law* their powers are subject to no judicial review; they are only responsible to the people.

Again, pages 147, 148, and 149:

"Now, although loans and stocks are distinguishable for many purposes, yet the legislature committed no very great solecism in treating loans as taxable property within our jurisdiction. The tax may be thought to be extravagant, especially in view of the taxation to which the owner is exposed in the place of his residence; but that is a consideration for legislative attention. The point we rule upon this part of the case is that corporation loans, though in some sense

mere debts, are, like moneys at interest, taxable as property, and moneys at interest have long been taxed in Pennsylvania.

"*Third.* Has the company the right to deduct the tax from the coupons? The third section of the act of 30th April, 1864 (Purdon, 1378), provides that 'every president, treasurer or cashier, or other officer of any company, incorporated or that may hereafter be incorporated, which pays interest to its depositors, bondholders or other creditors, upon which by the laws of this Commonwealth a State tax is imposed, shall, before payment of the same, retain from said depositors, bondholders or other creditors the amount of State tax imposed by existing laws, and shall pay over the same to the State treasurer,' &c.

"The purpose of this act of assembly was not to *impose a tax*, but to prescribe a mode of *collecting a tax*, and the tax referred to as the tax to be retained and paid over to the State treasurer is a tax upon interest accruing to bondholders or other creditors.

"But the three-mill tax is imposed, not on the interest, but on the principal of the plaintiff's bond. Here is a discrepance, undoubtedly, but it is more verbal than substantial. Taking the act of 1864 in connection with the prior acts to which I have referred, and reading them as parts of a *legislative system for aiding the revenues of the Commonwealth*, they amount to this and no more, that the three-mill tax shall be assessed upon the par value of the corporation loan and shall be retained by the corporation officers out of the accruing interest therein. The verbiology of acts of assembly passed at different times, though in pursuit of a common object, is very apt to be ambiguous and inartificial, and there is not more difficulty in reconciling the terms of these several acts than we are accustomed to encounter, but we must not allow *a too strict adherence to the words of the enactment* to defeat the intent of the legislature. In other

words, the acts being *in pari materia* must be so construed so as to give due effect to each. It is in this way only that we can reach an intelligible conclusion, and this is the mode by which we arrive at the above-stated result, that the taxation of the bonds is to be deducted from the accruing interest.

"If the act of 1864 be not applied to this tax upon the principal debt there is no tax to which it is applicable.

"But this, it is said, violates the faith of the obligation and renders all such legislation void. The argument is, that the company have contracted to pay so much interest to the plaintiff and the legislature cannot relieve them from this obligation. How far the modern tax laws shall be permitted to impair and alter private contracts is a great question which must be decided ultimately by the Supreme Court of the United States. I have my own private opinions which would probably be found to differ from a majority of this court, but I do not think it worth while to discuss the constitutionality of these Pennsylvania statutes whilst the country acquiesces in the excise law of the General Government, under the operation of which the same question might be frequently raised.

"For instance, a section of the excise law of 1864 authorized manufacturers who had existing contracts for delivery of manufactured goods at the date of the law to add the increased duties to the contract price and collect them from the vendee, and this is now done. So far as I know no question has been raised under that law upon the inviolability of contracts, and perhaps the sound conclusion is that governmental taxation, a thing always to be anticipated when contracts are made, does not impair the obligation of contracts within the meaning of the constitutional inhibition.

"If this be conceded as a principle, then the mode of collecting the tax, whether by a Government agent, a debtor corporation, or manufacturer, is mere machinery and involves no principle whatever.

"For the present, therefore, and speaking for the court, I lay it down that the acts of assembly to which I have referred are constitutional and valid; that they tax the loan as property found here in Pennsylvania, and that they appoint the debtor corporation the collector of that tax for the benefit of the State government."

The tax deducted in the above case was under the act entitled "An act imposing additional taxes for State purposes and to abolish the revenue board," approved April 30, 1864, page 219, section 3:

"SECTION 3. That every president, treasurer, cashier, or other officer of any company incorporated, or that may hereafter be incorporated, which pays interest to its depositors, bondholders or other creditors, upon which, by the laws of the Commonwealth, a State tax is imposed, shall, before payment of the same, retain from said depositors, bondholders or creditors the amount of State tax imposed by existing laws, and shall pay over the same to the State treasurer."

Delaware, Lackawanna & Western R. R. Co. vs. *Commonwealth*, 66 *P. S., p.* 64:

Thompson, C. J., in delivering the opinion of the court, says, page 69: "The right of the financial officers of the corporation to retain the three-mill tax, under the act of 1844, out of the interest payable to loan or bond holders of the company, under the act of 30th of April, 1864, without an assessment by the county commissioners or assessing officers was maintained to be undoubted in Maltby *vs.* The Reading and Columbia Railroad Company, 2 P. F. Smith, 140, and reasserted in The Commonwealth *vs.* The Phœnix Irón Co., not yet reported. The question is therefore settled.

"The second specification of objection filed on taking the appeal denies that there was any existing law prior to the act of 1864 imposing a tax upon the bonds of the appellants in the hands of non-resident bondholders. That question is

also *res adjudicata* (Maltby *vs.* The Reading and Columbia Co., *supra*). As to the third exception, that the retention of the tax impairs the obligation of the bond or loan holder's contract, it has been over and over again overruled. The sovereign right to impose a tax on property to which it gives protection is not to be denied without in a measure upturning organized society entirely. The act of 1864 provides a remedy for collecting it out of resources within the legislative jurisdiction of the Commonwealth. See the case last cited, in which this is ruled against the position assumed."

In the case of Commonwealth vs. *Lehigh Valley R. R. Co.*, 8 *Outerbridge*, 106, 107, and 108: "We can see no constitutional or other difficulty in the way of obliging the officers of corporations, municipal or private, by appropriate legislation, to assess and collect taxes upon their corporate loans or stocks. This method of reaching subjects capable of successful concealment and liable to escape the notice of the most vigilant assessor has for many years been recognized by our courts as a valid exercise of legislative power.

"It was applied under the 42d section of the act of 29th of April, 1844, to the indebtedness of municipal corporations in the following provision:

"It shall be the duty of the treasurer of each county, incorporated city, district, and borough of this Commonwealth, on the payment of any dividend or interest to any holder or agent claiming the same on any scrip, bond, or certificate of indebtedness issued by said incorporated city, district, and borough aforesaid to assess the tax herein made and provided for State purposes upon the nominal value of each and every said evidence of debt; said tax to be deducted by the said treasurer on the payment of any interest or dividend aforesaid, and the same shall be held by him until paid over to the State treasurer, and the said treasurers shall be subject to the same penalties and liabilities now prescribed by existing laws in relation to taxes on bank dividends.

"It was not until the act of 30th of April, 1864, however, that the system was applied to the loans and indebtedness of private corporations. By the last-named act it was provided that 'the officers of incorporated companies which pay interest,' &c., shall, before payment of same, retain from the 'depositors, bondholders, or creditors the amount of State tax imposed by existing laws, and shall pay over the same to the State treasurer.' It was further provided, however, as follows: 'And that all the laws regulating the mode of such payment, in regard to the treasurers of counties, cities, and boroughs, be, and the same are hereby, extended to the financial officers thereof, and they are hereby required to collect and pay over the taxes due to the State, on such payments of interest, as provided in this section to be done by officers of incorporated companies, and in case of any officer neglecting or refusing to retain the same, he shall become personally liable for the amount.'

"Thus it will be seen that the 42d section of act of 1844 makes particular provision for the assessment and collection of State taxes on municipal indebtedness, and therefore contains within itself abundant machinery for its own enforcement.

"A special method of assessment being thus provided, the subjects embraced in it are, of course, withdrawn from the ordinary methods pursued under the act, and the regular general assessment could not be presumed to contain what did not legitimately fall within its range. Whilst the presumption is legitimate that the accepted return of the assessors is full and true as to all matters falling within its scope, no presumption could arise that the officer transcended his duty, even if the return by the generality of its expression was susceptible of such a construction. In such a case a return of 'all mortgages, moneys owing by solvent debtors,' &c., would be construed to cover such mortgages, &c., only as came within the range of the assessor's duty. As this provision of the law of 1844 was incorporated into the act of

1864, and thus extended to the indebtedness of incorporated companies, the latter act also possessed the means of its own enforcement. It is urged, however, that the provisions of the act of 1844 were only extended to the financial officers of corporations so far as 'they regulate the mode of payment,' and that the mode of payment does not necessarily embrace the power and process of assessment. Such has not been the construction which this Court has put upon the act of 1864.

"That act was first considered by this Court in the case of Maltby *vs.* R. & C. R. R. Co., 2 P. F. Smith, 140, and although the reasoning of the case is not fully developed in the opinion it proceeds upon the assumption that the assessment under the act of 1864 was upon the par or nominal value under the provision incorporated from the act of 1844, and thus the phrase 'the laws regulating the mode of payment' was construed to embrace the whole process of assessment and collection. The question was fairly raised, however, elaborately discussed, and distinctly decided in the case of The Commonwealth *vs.* Phœnix Iron Company, heard at the January term, 1868, but not reported. In that case Justice Agnew, in delivering the opinion of the court, says:

"'We think the valuation and assessment, according to the thirty-second section of the act of 1844, was not an essential prerequisite. The third section of the act of 30th of April, 1864, under which the return was made, provided that all the laws regulating the mode of such payment in regard to treasurers of counties, cities, and boroughs shall be extended to the financial officers of the companies.'

"The forty-second section of the act of 1844, regulating the duties of such treasurers, directs them to assess the tax upon the nominal value of the evidence of debt, and deduct it from the interest or dividend, and pay it over to the State treasurer. Thus the law itself fixes the measure of valuation at the par value of the debt.

"This was followed by D., L. & W. R. R. Co. *vs.* Commonwealth, 16 P. F. Smith, 69, where Thompson, C. J., following the previous cases, says: 'The right of the financial officers of the corporation to retain the three-mill tax, under the act of 1844, out of the interest payable to loan or bondholders of the company, under the act of 30th of April, 1864, without an assessment by the county commissioners or assessing officers, was maintained to be undoubted in Maltby *vs.* The Reading and Columbia Railroad Co., 2 P. F. Smith, 140, and re-asserted in The Commonwealth *vs.* The Phœnix Iron Co., not yet reported. The question is therefore settled.'

"The laws regulating the mode of payment in regard to treasurers of the counties, cities, and boroughs, as extended to the financial officers of incorporated companies under the act of 1864, therefore embraces all the processes of assessment and collection."

An assessment is complete for State purposes after the property has been classified and a valuation and apportionment made. (Cooly on Tax, p. 258.)

The reports made by corporations constitute assessment. D. L. & W. R. R. Co. *vs.* Commonwealth, 16 Smith, 69; Commonwealth *vs.* Phœnix Iron Company (89, May T., 1869, not reported).

In the last case above cited it is held that the word *value* when it occurs in the revenue acts means *nominal or par value.*

The method of determining the liability of corporations for such taxes has been uniform since 1844. The act of 1844 specifies the treasurer as the party to make the deduction of tax. The act of 1864 specifies the president, treasurer, or other officer as the active party. The act of May 1, 1868, P. L., 109 (sections 4 and 5), provides that "the tax on capital stock shall be retained and deducted by the treasurer or other officer having charge of any corporation or company as aforesaid from the dividends or profits made or de-

cleared, and in section 11, P. L. 1868, p. 112, makes the following provisions for the assessment of a tax on the indebtedness of corporations:

"SECTION 11. That the president, treasurer or cashier of every company, except banks or savings institutions incorporated under the laws of this Commonwealth, doing business in this State, which pays interest to its bondholders or other creditors, shall before the payment of the same, retain from said bondholders or creditors a tax of five per centum upon every dollar of interest paid as aforesaid; and shall pay over the same semi-annually, on the first days of July and January in each and every year, to the State treasurer for the use of the Commonwealth; and every president, treasurer or cashier as aforesaid shall annually, on the thirty-first day of each December, or within thirty days thereafter, report to the auditor general, under oath or affirmation, stating the entire amount of interest paid by said corporation to said creditors the year ending on that day; and thereupon the auditor general and State treasurer shall proceed to settle an account with said corporation as other accounts are now settled by law; and in the settlements of said accounts the persons aforesaid shall be allowed the same commission or compensation as is now allowed by law to county treasurers; and in case the said president, treasurer or cashier shall neglect or refuse to make the report required by this section, within sixty days after the time specified, he shall forfeit to the State the amount of his commission for such failure or neglect: *Provided*, That the principal sums from the interest of which the said tax is deducted shall not be assessed for State purposes in the valuation of personal property, or returned by county commissioners to the board of revenue commissioners."

The act of June 7, 1879, provided that "all corporations paying interest on loans hereby taxed for State purposes only *shall deduct the said tax from the said interest* and

pay the same into the State treasury." The only provision of the act in relation to the assessment is the above, except that the payment of said tax shall relieve the corporation from any further taxation.

The act of 1881 makes it the duty of the corporation to deduct the tax, while the act of 1885 complained of makes it the duty of the treasurer to assess and deduct the tax from the owner of the bond.

As the Coal Ridge Improvement and Coal Company is a corporation existing under the laws of this Commonwealth, holding its franchises and its privileges at the will of the power creating it, it would seem very reasonable that it could not dispute the right of the State to assess any tax upon its corporate existence imposed by legislative authority. Whether the tax is equal or unequal on the same class of subjects would naturally seem to be of little account when equality of taxation is pleaded by a corporation whose very existence depends on legislative enactment or profits made or declared, and in section 11, P. L. 1868, p. 112, makes the following provision for the assessment of a tax on the indebtedness of corporations.

The act of 1885 required that the defendant deduct three mills' tax upon its indebtedness as a condition of its existence as a corporation. The plaintiff, who is a bondholder, says the company has no right to deduct the three mills' tax on the bonds held by the plaintiff, because the bonds held by him are not worth more than 75 cents on the dollar, and that therefore the taxation for State purposes is unequal as between him and the holder of bonds in the other companies whose bonds are worth the face or more in market.

What equity is there in the allegation of the plaintiff, that he is unequally or unjustly treated on the question of taxation?

The price paid for his bonds may have been less or more than the face value, but he bought them with the knowledge of the provisions of the Constitution and the uniform

practice of taxing such indebtedness for almost half a century.

Undoubtedly the price of a bond depends largely upon the question of taxation in the hands of the holder, and the plaintiff undoubtedly had the benefit of this in the purchase of his bonds.

Second. This Court has repeatedly held that equality is not practicable in revenue laws. If perfect equality should be required, no revenue law would stand the test.

State Railroad Tax Cases, 92 *U. S. Rept.*, 612:

"As to section 1, we need not inquire very closely whether the mode adopted by the statute and the rules of the board of equalization produces a valuation for railroad companies different from that of individuals, though, as we have already said, it does not appear to us to produce any inequality to the prejudice of the companies.

"But we need not pursue that inquiry very closely, because the latter part of the section in express terms authorizes the legislature to 'tax persons and corporations owning or using franchises in such manner as it shall from time to time direct by general law,' and the only restriction on the power, as applied to this class, is that it shall be 'uniform as to the class upon which it operates.'

"There can be no doubt that all the classes named in this clause, including peddlers, showmen, innkeepers, ferries, express, insurance, and telegraph companies, are taken out of the general rule of uniformity prescribed by the first clause, and the only limitation as to them is that of uniformity as to the class upon which the law shall operate—that is, innkeepers may be taxed by one, ferries by another, railroads by another, provided that the rule as to innkeepers be uniform as to all innkeepers, the rule as to ferries uniform as to all ferries, and the rule as to railroad companies be uniform as to all railroad companies. As we have seen no evidence

that the rule by which railroad property is taxed is not uniform in its action on all the railroad companies of Illinois, we can perceive no opposition to the constitution of the State in that rule.

"But suppose it were otherwise; perfect equality and perfect uniformity of taxation as regards individuals or corporations or the different classes of property subject to taxation is a dream unrealized. It may be admitted that the system which most nearly attains this is the best; but the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be perfect; and when we come to its application to the property of all its citizens and of those who are not citizens in all the localities of a large State like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must invariably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded. (Tappan *vs.* Merchants' National Bank, 19 Wall., 504; Weber *vs.* Reinhard, 73 Penn. St., 373; Commonwealth *vs.* Savings Bank, 5 Allen, 47; Allen *vs.* Drew, 44 Vt., 174.)

"It has been repeatedly decided that neither the mere illegality of the tax complained of nor its injustice nor irregularity of themselves give the right to an injunction in a court of equity.

"Moore *vs.* Smedley, 6 Johns. Ch., 27; Dodd *vs.* Hartford, 26 Conn., 239; Green *vs.* Munford, 5 R. I., 478; Messert *vs.* Supervisors of Columbia, 50 Barb., 190; Dow *vs.* Chicago, 11 Wall., 108; Hannewinkle *vs.* Georgetown, 15 Wall., 548."

Weber vs. *Reinhard*, 73 *P. S.*, 373:

"The opinion in Hammett's case had been published immediately after the first argument, though not reported until after the second. It was cited, and was the main reliance of the appellant in Durach's appeal, 12 P. F. Smith, 491,

clared, and in section 11, P. L. 1868, p. 112, makes the following provisions for the assessment of a tax on the indebtedness of corporations:

"SECTION 11. That the president, treasurer or cashier of every company, except banks or savings institutions incorporated under the laws of this Commonwealth, doing business in this State, which pays interest to its bondholders or other creditors, shall before the payment of the same, retain from said bondholders or creditors a tax of five per centum upon every dollar of interest paid as aforesaid; and shall pay over the same semi-annually, on the first days of July and January in each and every year, to the State treasurer for the use of the Commonwealth; and every president, treasurer or cashier as aforesaid shall annually, on the thirty-first day of each December, or within thirty days thereafter, report to the auditor general, under oath or affirmation, stating the entire amount of interest paid by said corporation to said creditors the year ending on that day; and thereupon the auditor general and State treasurer shall proceed to settle an account with said corporation as other accounts are now settled by law; and in the settlements of said accounts the persons aforesaid shall be allowed the same commission or compensation as is now allowed by law to county treasurers; and in case the said president, treasurer or cashier shall neglect or refuse to make the report required by this section, within sixty days after the time specified, he shall forfeit to the State the amount of his commission for such failure or neglect: *Provided*, That the principal sums from the interest of which the said tax is deducted shall not be assessed for State purposes in the valuation of personal property, or returned by county commissioners to the board of revenue commissioners."

The act of June 7, 1879, provided that "all corporations paying interest on loans hereby taxed for State purposes only *shall deduct the said tax from the said interest* and

pay the same into the State treasury." The only provision of the act in relation to the assessment is the above, except that the payment of said tax shall relieve the corporation from any further taxation.

The act of 1881 makes it the duty of the corporation to deduct the tax, while the act of 1885 complained of makes it the duty of the treasurer to assess and deduct the tax from the owner of the bond.

As the Coal Ridge Improvement and Coal Company is a corporation existing under the laws of this Commonwealth, holding its franchises and its privileges at the will of the power creating it, it would seem very reasonable that it could not dispute the right of the State to assess any tax upon its corporate existence imposed by legislative authority. Whether the tax is equal or unequal on the same class of subjects would naturally seem to be of little account when equality of taxation is pleaded by a corporation whose very existence depends on legislative enactment or profits made or declared, and in section 11, P. L. 1868, p. 112, makes the following provision for the assessment of a tax on the indebtedness of corporations.

The act of 1885 required that the defendant deduct three mills' tax upon its indebtedness as a condition of its existence as a corporation. The plaintiff, who is a bondholder, says the company has no right to deduct the three mills' tax on the bonds held by the plaintiff, because the bonds held by him are not worth more than 75 cents on the dollar, and that therefore the taxation for State purposes is unequal as between him and the holder of bonds in the other companies whose bonds are worth the face or more in market.

What equity is there in the allegation of the plaintiff, that he is unequally or unjustly treated on the question of taxation?

The price paid for his bonds may have been less or more than the face value, but he bought them with the knowledge of the provisions of the Constitution and the uniform

practice of taxing such indebtedness for almost half a century.

Undoubtedly the price of a bond depends largely upon the question of taxation in the hands of the holder, and the plaintiff undoubtedly had the benefit of this in the purchase of his bonds.

Second. This Court has repeatedly held that equality is not practicable in revenue laws. If perfect equality should be required, no revenue law would stand the test.

State Railroad Tax Cases, 92 *U. S. Rept.*, 612:

"As to section 1, we need not inquire very closely whether the mode adopted by the statute and the rules of the board of equalization produces a valuation for railroad companies different from that of individuals, though, as we have already said, it does not appear to us to produce any inequality to the prejudice of the companies.

"But we need not pursue that inquiry very closely, because the latter part of the section in express terms authorizes the legislature to 'tax persons and corporations owning or using franchises in such manner as it shall from time to time direct by general law,' and the only restriction on the power, as applied to this class, is that it shall be 'uniform as to the class upon which it operates.'

"There can be no doubt that all the classes named in this clause, including peddlers, showmen, innkeepers, ferries, express, insurance, and telegraph companies, are taken out of the general rule of uniformity prescribed by the first clause, and the only limitation as to them is that of uniformity as to the class upon which the law shall operate—that is, innkeepers may be taxed by one, ferries by another, railroads by another, provided that the rule as to innkeepers be uniform as to all innkeepers, the rule as to ferries uniform as to all ferries, and the rule as to railroad companies be uniform as to all railroad companies. As we have seen no evidence

that the rule by which railroad property is taxed is not uniform in its action on all the railroad companies of Illinois, we can perceive no opposition to the constitution of the State in that rule.

"But suppose it were otherwise; perfect equality and perfect uniformity of taxation as regards individuals or corporations or the different classes of property subject to taxation is a dream unrealized. It may be admitted that the system which most nearly attains this is the best; but the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be perfect; and when we come to its application to the property of all its citizens and of those who are not citizens in all the localities of a large State like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must invariably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded. (Tappan *vs.* Merchants' National Bank, 19 Wall., 504; Weber *vs.* Reinhard, 73 Penn. St., 373; Commonwealth *vs.* Savings Bank, 5 Allen, 47; Allen *vs.* Drew, 44 Vt., 174.)

"It has been repeatedly decided that neither the mere illegality of the tax complained of nor its injustice nor irregularity of themselves give the right to an injunction in a court of equity.

"Moore *vs.* Smedley, 6 Johns. Ch., 27; Dodd *vs.* Hartford, 26 Conn., 239; Green *vs.* Munford, 5 R. I., 478; Messert *vs.* Supervisors of Columbia, 50 Barb., 190; Dow *vs.* Chicago, 11 Wall., 108; Hannewinkle *vs.* Georgetown, 15 Wall., 548."

Weber vs. *Reinhard*, 73 *P. S.*, 373:

"The opinion in Hammett's case had been published immediately after the first argument, though not reported until after the second. It was cited, and was the main reliance of the appellant in Durach's appeal, 12 P. F. Smith, 491,

which settled, however, the principle which seems to us to be decisive of the main question raised on this record, to wit, the constitutionality of the tax imposed upon the owners of ore beds in Upper Saucon township, Lehigh county, by the act of assembly of April 14, 1868 (Pamph. L., 1127). It was there held that while the legislature cannot, under the name of taxation, take private property for public use without compensation, and that therefore a special tax on individuals or particular properties would be unconstitutional, yet in the exercise of the power of taxation persons and things may be legitimately classified—some kinds may be assessed and others not—and that even special exceptions are not unconstitutional. There is no provision in the constitution that taxation shall be equal. Sound policy requires that it should be so far as possible. But perfect equality is not possible. Indeed, if this were necessary there could be no taxation except such as would include every person and everything, which would manifestly be impracticable and unjust.

"It is gravely contended that this court has the power to set aside unjust, unequal, and improper legislation relating to taxation, and The Philadelphia Association *vs.* Wood, 3 Wright, 73, is relied on as establishing this position. There are many things contained in the opinion in that case entirely aside from the point decided, and therefore mere *obiter dicta*. All that was determined was an act of assembly which required all agencies for foreign insurance, trust, and annuity companies in the city of Philadelphia to pay two per centum of their gross premiums to an association for the relief of disabled firemen was not taxation at all. It was taking the property of A and giving it to B; whether for a charitable or any other mere private purpose it mattered not. No doubt after money raised by taxation has reached the public treasury it may be appropriated by the legislature to charities or individuals.

"It was admitted, indeed, that the tax in that case would

be clearly constitutional if it had been levied for and paid into the public treasury, and the idea that the court could pronounce a tax unconstitutional on the mere ground of injustice or inequality was expressly repudiated."

Kelly vs. *City of Pittsburg*, 85 *P. S.*, 178:

"On the broad ground, therefore, on which the plaintiff has put his plaint it cannot be maintained and must be dismissed. Considering it, however, from the less general and most favorable point of view, and it but comes to this: that the taxation is unequal and burthensome and that the complainant is taxed for some things, as police and water, from which, however necessary for the welfare of the municipality, he derives no benefit. Granted that the tax is both unjust and unequal, it does not follow that the remedy is within the power of the courts. On the other hand, the contrary has been expressly ruled. In the case of Weber *vs.* Reinhard, 23 P. F. Smith, 370, Mr. Justice Sharswood says, in commenting on the case of The Philadelphia Association *vs.* Wood, 3 Wright, 73: 'The idea that the court could pronounce a tax unconstitutional on the mere ground of injustice or inequality was expressly repudiated.' He further remarks: 'There is no provision in the constitution that taxation shall be equal. Sound policy requires that it should be so far as possible, but perfect equality is not possible.'

"So in Kirby *vs.* Shaw, 7 Harris, 258, Gibson, C. J., says: 'As regards taxation, there is no limitation of it. Equality of contribution is not enjoined in the bill of rights and probably because it was known to be impracticable.' That the person taxed derives no immediate personal benefit from the purposes to which the taxes are appropriated is in like manner no argument against the constitutionality of the law imposing them. for if direct personal benefit were to form a criterion for taxation we should have half the community clamoring at our doors for relief. What interest, direct and

personal, has the unseated land-owner in the schools or poor of the borough or township in which his lands lie? Or, for that matter, what interest has any one not having children to educate in the schools of either township, borough, or city? Why shall one pay road tax when roads are of no benefit to himself or his property?

"Why shall he help pay the expenses of a fire department when his property is so situated that it may burn down before an engine can reach it, or why, either in the country or city, having a supply of water on his premises, shall he pay a water tax? To these questions there is but one answer. These things are intended for the public good, and hence every one is indirectly, if not directly, benefited thereby. The taxes levied for their maintenance are a public burthen, and therefore every one must contribute to its support. If, however, this burthen rests unfairly heavy upon some classes or upon some individuals the remedy is not with the courts, but with the legislature. As is said in Kirby *vs.* Shaw, the judiciary could interfere only 'by overstepping the limits of its sphere; by arrogating to itself a power beyond its province; by producing intestine discord, and by setting an example which other organs of the government might not be slow to follow.' But the legislature has granted all the relief that the plaintiff and his class ought, in reason, to expect or ask, for at the time of filing of this bill rural lands were authorized to be taxed at but two-thirds of the ordinary municipal rates, and now, by the act of May 5, 1875 (Pamph. L., 124), at but one-half those rates. Thus the injustice and inequality of the taxation complained of has been, if not wholly obviated, at least very much mitigated.

"Again, taxation is peculiarly a legislative function, and before we undertake to revise it we should have a clear warrant therefor in the letter of the constitution. 'A law must be considered valid unless it be for the purpose in which the community taxed has no palpable interest—when it is apparent that the burthen is imposed for the benefit of

others and when it would be so pronounced at first blush.' Sharpless *vs.* The Mayor of Philadelphia, 9 Harris, 147 (Black, C. J.); Speer *vs.* Blairsville, 14 Wright, 150 (Agnew, J.). But in the present case there is no doubt that the community has a direct and vital interest in the taxation complained of, and, such being the case, there is an end of our power to grant relief."

Commonwealth vs. *Reading & Wilmington R. R. Co.*, 2 *Parsons*, 394:

"The act of May 1, 1868, does not impose a tax upon corporations, but directs their officers to retain it from the interest of the money due to their creditors, residents of this Commonwealth, and pay it into the State treasury. This law is constitutional."

Page 396:

"We cannot for a moment doubt the constitutional power of the legislature to oblige corporations of its own creation to perform duties like those enjoined under this law. They have conferred on them certain valuable privileges and franchises, and in return may be called on to perform such acts as the law points out, especially when of little burden to themselves or their officers. In the present case it is not pretended to tax the money of non-residents. On the contrary, the settlement is confined to the bonds of residents of Pennsylvania. The power to tax our citizens for money at interest was first asserted in the act of April 29, 1844, and has never been seriously questioned since. The validity of an income tax imposed by a State on its own citizens was never doubted. When The C. P. & A. R. R. Co. *vs.* Commonwealth (15 Wallace, 300) and the other cognate cases were before this court, my own individual opinion was that the tax imposed on the bonds of non-residents exceeded the power of the legislature; and, as no deduction could lawfully

be made from the interest due on account of said tax, it impaired the obligation of the contract between the corporation and the individual creditor; but, as Maltby *vs.* The R. & C. R. R., 2 P. F. Smith, 140, was then decided, I did not permit myself to reason on the subject, knowing that the case was of binding authority on me. The power to use the corporation as an instrument for the collection of the State tax from our own citizens I never doubted. We do not consider that the case cited from 15 Wallace decides or pretends to decide that the legislature of a State cannot tax the income or means of its own citizens, whether derived from the profits of business, the rents of property, money at interest, or from whatever other source, but it can only tax the property of non-residents when found within its borders."

Appeal of William H. Brown, 1 *Amerman*, 80:

"The tax power of this Commonwealth is vested absolutely in the legislature. When not prohibited by the constitution the only limitation in the exercise of that power is its own discretion. (Penna. R. R. Co. *et al vs.* The City of Pittsburg, 14 Pitts. Leg. Jour., 289.)

"The constitution which went into effect in January, 1874, does not name the specific articles or kinds of property subject to taxation. It wisely left that to sound legislative discretion.

"There is nothing therein indicating an intention to prohibit the imposition of taxes on any species of property previously subjected thereto."

Fox's Appeal, 17 *Weekly Notes Cases*, 449:

"The supreme court will not declare an important revenue act of the Commonwealth unconstitutional and void unless it amounts to a palpable violation of the Constitution of the Commonwealth."

In the case of Sharpless *vs.* the Mayor of Philadelphia (21 P. S., 147; 59 Am. Decisions, p. 759); Black, C. J., discusses very fully the powers and duties of courts in determining whether an act is unconstitutional. The question involved the constitutionality of an act authorizing the subscription to railroad bonds and taxation of the citizens of Philadelphia to pay them:

"I am not aware that any State court has ever yet held a law to be invalid except where it was clearly forbidden. Certainly no case of a different character has been cited at the bar. In many cases which affirm the validity of State laws this principle is uniformly recognized, either tacitly or expressly. The Supreme Court of the United States has adhered to it on every occasion when it has been questioned there.

"In Satterlee *vs.* Matthewson, 2 Pet., 380, an act of the Pennsylvania legislature was censured as unwise and unjust; but because it came within no express prohibition of the Constitution it was held to be binding on the parties interested; and in Fletcher *vs.* Peck, 6 Cranch, 87, it was declared that while the legislature was within the Constitution even corruption did not make its acts void. In Calder *vs.* Bull, 3 Dall., 386, Mr. Justice Iredell said: 'If a State legislature shall pass a law within the general scope of their constitutional powers, the court cannot pronounce it to be void merely because it is, in their judgment, contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard. The ablest and the purest men have differed upon the subject, and all the court in such an event could say would be that the legislature (possessed of an equal right of opinion) had passed an act which in the opinion of the judges was contrary to abstract principles of right.' Judge Washington, in Golden *vs.* Prince, 3 Wash., 313, decides that the State legislatures may make such laws as they think fit, unless inconsistent with

the powers exclusively vested in the Government of the United States or forbidden by some article of the Federal or State constitution. Judge Baldwin, in Bennett *vs.* Boggs, 1 Baldw., 74, has expressed so clearly what I think is the true view of the subject that I cannot do better than transcribe his words: 'We may think,' says he, 'the powers conferred by the constitution of this State too great or dangerous to the rights of the people, and that limitations are necessary; but we cannot affix them or act on cases arising under State laws as if boundaries had been affixed by the constitution previously. We cannot declare a legislative act void because it conflicts with our opinions of policy, expediency, or justice. We are not the guardians of the rights of the people of the State, unless they are secured by some constitutional provision which comes within our judicial cognizance. The remedy for unwise and oppressive legislation within constitutional bounds is by an appeal to the justice and patriotism of the representatives of the people. If this fails, the people, in their sovereign capacity, can correct the evil, but courts cannot assume their rights.'

"Chief Justice Marshall, in the Providence Bank *vs.* Billings, 4 Pet., 562, says: 'The interest, wisdom, and justice of the representative body and its relations with its constituents furnish the only security, when there is no express contract, against excessive taxation as well as against unwise legislation generally.' When we come home and look into the precedents established by this Court we find them uniformly and distinctly denying the right to go beyond the Constitution. In Norris *vs.* Clymer, 2 Pa. St., 285, Chief Justice Gibson, with characteristic directness of expression, declares that the constitution allows to the legislature every power which it does not positively prohibit. It was laid down in Commonwealth *vs.* McCloskey, 2 Rawle, 374, that if the legislature pass a law within the scope of their constitutional power, the judicial tribunals have no right to pronounce it void. Commonwealth *vs.* McWilliams, 11 Pa.

St., 61, decided that express prohibition or necessary implication is essential to oust the jurisdiction of the legislature. In the very last case that came before us, Commonwealth *vs.* Hartman, 17 *id.*, 118, it was decided that the assembly had jurisdiction of all cases in which its legislation was not prohibited; that the law then in question was valid because there was no syllable in the constitution to forbid it, and that if a law unjust in its operation and nevertheless not forbidden by the constitution should be enacted, the remedy lay not in an appeal to the judiciary but to the people, who must apply the corrective themselves, since they had not intrusted the power to us.

"There is another rule which must govern us in cases like this, namely, that we can declare an act of assembly void only when it violates the constitution clearly, palpably, plainly, and in such manner as to leave no doubt or hesitation on our minds. This principle is asserted by judges of every grade, both in the Federal and in the State courts, and by some of them it is expressed with much solemnity of language. (Fletcher *vs.* Peck, 6 Cranch, 87; Cooper *vs.* Telfair, 4 Dall., 14; Moore *vs.* Houston, 3 Serg. & R., 178; Eakin *vs.* Raub, 12 *id.*, 339; Commonwealth *vs.* Smith, 4 Binn., 123.) A citation of all the authorities which establish it would include nearly every case in which a question of constitutional law has arisen. I believe it has the singular advantage of not being opposed even by a dictum."

Page 771: "The first section of the same article enumerates among the natural rights of men that of 'acquiring, possessing, and protecting property.' Undoubtedly this is a right which the legislature cannot take away. Our constitution makes property as sacred as life, but no man's right to his property can be so absolute as to exempt it from a fair share of the public burdens lawfully and constitutionally imposed. Of course, we will not assume that the burden here apprehended is unlawful and unconstitutional merely that we may

make it conflict with the section. To do so would be reasoning in a vicious circle.

"It is further argued that these laws authorize the taking of private property for public use without just compensation, contrary to section ten of the declaration of rights. It is certain that the plaintiff can expect no compensation in the proper sense of that word as here used. It is also true that if the railroad stocks which the city authorities are about to purchase shall depreciate or fail at any time to produce dividends equal to the interest on the bonds, the property of the citizens may be taxed to make up the difference; but property is not taken when it is merely subjected on a future contingency to the liability of being taxed higher than it is at present. The word 'take' is one of the commonest and plainest in the language, and cannot easily be misunderstood, either by a lawyer or layman. As used in the constitution, it has universally, in this State and elsewhere, been interpreted to mean a taking altogether—a seizure, a direct appropriation, dispossession of the owner: *In re* Philadelphia & Trenton R. R. Co., 6 Whart., 46 (36 Am. Dec., 202); *In re* City of Pittsburg, 2 Watts & S., 325; Monongahela Nav. Co. *vs.* Coon, 6 *id.*, 116 (47 Am. Dec., 474); Mayor, etc., of Pittsburg *vs.* Scott, 1 Pa. St., 314; Callender *vs.* Marsh, 1 Pick., 418; Charles River Bridge *vs.* Warren Bridge, 7 *id.*, 344. We would be disregarding its popular as well as legal signification if we would declare property to be taken when it is merely depreciated in value or incumbered or incidentally injured. Least of all is it a taking to tax it: People *vs.* Mayor of Brooklyn, 4 N. Y., 419 (55 Am. Dec., 266). Inasmuch as the compensation is made by the constitution a necessary concomitant of all taking for public use, if we say that taxation and taking are the same we are reduced to the absurdity of deciding that no tax can be levied for the most important purpose of the State without an immediate redistribution of it among the people who pay it.

"The ninth section of article 9 declares that the 'citizen cannot be deprived of his life, liberty, or property unless by the judgment of his peers or the law of the land.' The word 'deprived' in this section has received the same construction as the word 'taken,' in section 10, and for reasons equally clear and strong. It cannot be said that a citizen is deprived of his property when he is left in the undisturbed possession of it, whatever taxation may be imposed on it.

"It is said that this is a taking of private property for private use. If this be so, it is palpably unconstitutional. Perhaps there is nothing in the books which shows the tenacity with which the court has adhered to the letter of the constitution in determining the extent of legislative power more plainly than the doubt which was once entertained in Harvey *vs.* Thomas, 10 Watts, 63 (36 Am. Dec. 141), whether the want of an express inhibition did not permit the assembly to take one man's property and give it to another. The constitution does prohibit it. It is not within the general grant of legislative power. It would be gross usurpation of judicial authority, and would violate the very words of section 11, article 9. The legislature could not make such a rescript (for it would not be a law) any more than they could order an innocent man to be put to death without trial. But do the acts of assembly before us take private property for private use, or permit it to be done by the city authorities? I think I have shown that it is no taking at all.

"The taxing power, being a legislative duty, is of course intrusted to the General Assembly, and it is given to them without any restriction whatever. They are to use it according to their discretion; and if they abuse it, and if public opinion is not just or enlightened enough to correct their errors, there is no remedy. I use the language of Chief Justice Marshall in McCullough *vs.* State, 4 Wheat., 316, when I say that it may be exercised to any extent to which the government may choose to carry it, and that no limit has

been assigned to it, because the exigencies of the government cannot be limited.

"But I do not mean to assert that every act which the legislature may choose to call a tax law is constitutional. The whole of a public burden cannot be thrown on a single individual under pretense of taxing him; nor can one county be taxed to pay the debt of another, nor one portion of the State to pay the debts of the whole State. These things are not excepted from the powers of the legislature because they did not pass to the assembly by the general grant of legislative power. A prohibition was not necessary. An act of assembly commanding or authorizing them to be done would not be law, but an attempt to pronounce a judicial sentence, order, or decree.

"It is the theory of a republican government that taxes shall be laid in proportion to the nature of property, and when collected shall be applied only to purposes in which the tax-payers shall have an equal interest. But this is impossible, even in the simplest state of society, and becomes more and more difficult in proportion as a higher civilization diversifies the characters, circumstances, and the pursuits of the people. 'A just and perfect system of taxation,' says Chancellor Kent, 'is yet a desideratum in civil government' (2 Kent's Com., 332). No county or municipal tax ever came up to the theory, and the taxes now levied by the State are a grievous violation of it. The improvements made by the Commonwealth added largely to the fortunes of some; to others they did no service, and some were injured by them. Still, all are now compelled to pay for them. It is not, therefore, every inequality of burden or benefit—not every disproportion between the sum which a citizen pays and the interest which he as an individual has in the purpose to which it is applied—that can make a tax law void. I am of opinion with the supreme court of Kentucky in Cheaney *vs.* Hooser, 9 B. Mon., 345, that a tax law must be considered valid unless it be for a purpose in which the

community taxed has palpably no interest, where it is apparent that a burden is imposed for the benefit of others, and where it would be so pronounced at the first blush."

Page 778: "I will conclude with a recapitulation of the points and principles which I think settle the case.

"1. In determining whether an act of the legislature is constitutional or not we must look to the body of the constitution itself for reasons. The general principles of justice, liberty, and right not contained or expressed in that instrument are not proper elements of a judicial decision upon it.

"2. If such act be within the general grant of legislative power—that is, if it be in its character and essence a law, and if it be not forbidden expressly or impliedly, either by the State or Federal Constitution, it is valid.

"3. To make it void it must be clearly not an exercise of legislative authority, or else be forbidden so plainly as to leave the case free from all doubt.

"4. An act of assembly authorizing a subscription by a city to the stock of a railroad corporation is not forbidden by article 1, section 13, of the State constitution, that section not being a restriction upon the legislative authority of the two houses, but a bestowal of privileges upon the separate branches.

"5. Such an act does not impair the obligations of any existing contract, nor does it attempt the impossibility of creating a contract, but merely authorizes two corporations to make one if they shall see proper.

"6. This is not such an injury to the plaintiffs' lands, goods, or persons that they are entitled to a judicial remedy for it agreeably to section 11 of article 9. It is no injury at all, except on the gratuitous assumption that it is forbidden in some other part of the constitution.

"7. It does not violate the right of acquiring, possessing, and protecting property secured by section 1 of article 9. The right of property is not so absolute but that it may be taxed for the public benefit.

"8. This is not a taking of private property for public use without compensation, contrary to section 10 of article 9. When property is not seized and directly appropriated to public use, though it be subjected in the hands of the owner to greater burdens than it was before, it is not taken.

"9. It cannot be said that the plaintiffs will be deprived of their property in violation of section 9 of article 9. The settled meaning of the word 'deprive' as there used is the same as that of the word 'take' in section 10."

People *ex rel.* Griffing *vs.* Mayor, etc., of Brooklyn, 55 American Decisions, 266.

See page 269:

"Taxation exacts money or services from individuals as and for their respective shares of contribution to any public burden. Private property taken for public use by right of eminent domain is taken not as the owner's share of contribution to a public burden, but as so much beyond his share. Special compensation is therefore to be made in the latter case, because the government is a debtor for the property so taken, but not in the former, because the payment of taxes is a duty and creates no obligation to repay otherwise than in the proper application of the tax.

"Taxation operates upon a community or upon a class of persons in a community and by some rule of apportionment. The exercise of the right of eminent domain operates upon an individual and without reference to the amount or value exacted from any other individual or class of individuals. Keeping these distinctions in mind it will never be difficult to determine which of the two powers is exerted in any given case.

"It may be proper here, although not strictly necessary, to express the opinion that money cannot be exacted by the government by right of eminent domain, excepting, perhaps, for the direct use of the State at large and when the State at large is to make the compensation.

"The power of legislation, and consequently of taxation, operates on all the persons and property belonging to the body politic. This is an original principle, which has its foundation in society itself. It is granted by all for the benefit of all. It resides in the government as part of itself, and need not be reserved where property of any description or the right to use it in any manner is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature. This vital power may be abused, but the interest, wisdom, and justice of the representative body and its relations with its constituents furnish the only security against unjust and excessive taxation as well as against unwise legislation."

And again, in McCulloch *vs.* Maryland, 4 Wheat., 428, the following observations are found coming from the same high authority:

"It is admitted that the power of taxing the people and their property is essential to the very existence of government and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax the government acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation. The people of a State, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of the government cannot be limited they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislature and the influence of the constituents over their representatives to guard them against its abuse."

And again, at page 430, he speaks of it as "unfit for the judicial department to inquire what degree of taxation is the legitimate use and what degree may amount to the abuse of the power."

Assuming this, as we safely may, to be sound doctrine, it must be conceded that the power of taxation and of apportioning taxation or of assigning to each individual his share of the burden is vested exclusively in the legislature unless this power is limited or restrained by some constitutional provisions. The power of taxing and the power of apportioning taxation are identical and inseparable. Taxes cannot be laid without apportionment, and the power of apportionment is therefore unlimited unless it be restrained as a part of the power of taxation.

See page 286, note *b*, constitutional provisions without application to assessments and taxes:

Provisions of constitutions that no person shall be deprived of his property without due process of law, and that private property shall not be taken for public use without just compensation, have no application to the exercise of the taxing power by whatever method it may be exercised. (People *vs.* Lawrence, 41 N. Y., 140; Bank of Rome *vs.* Village of Rome, 18 *id.*, 44; Hagar *vs.* Supervisors of Yolo Co., 47 Cal., 234; Town of Guilford *vs.* Cornell, 18 Barb., 634; Mann *vs.* City of Utica, 44 How. Pr., 341; Darlington *vs.* Mayor, etc., of New York, 31 N. Y., 190; S. C., 28 How., Pr., 358.

Page 288:

"Apportionment of taxes and assessments—Taxation, how far must be uniform: City of Lexington *vs.* McQuillan, 35 Am. Dec., 159; City of Louisville *vs.* Hyatt, 36 *id.*, 594. A State may enact license laws notwithstanding there is a constitutional provision declaring that taxation shall be uniform. (People *vs.* Naglee, 52 *id.*, 312, and note.) The legislative

power to apportion taxes and assessments follows as a corollary to the power to tax in the absence of constitutional restrictions and is equally broad. The principal case has been frequently cited to this proposition. (Brewster *vs.* City of Syracuse, 19 N. Y., 118; People *vs.* Nearing, 27 *id.*, 309; People *vs.* Lawrence, 41 *id.*, 140; Gordon *vs.* Cornes, 47 *id.*, 611, 612; *In re* Van Antwerp, 56 *id.*, 265; Baldwin *vs.* Mayor, 2 Keyes, 397; People *vs.* Edmunds, 15 Narb., 534; Woodruff *vs.* Fisher, 17 *id.*, 231; People *vs.* Haws, 12 Abb. Pr., 205; S. C., 34 Barb., 76; 21 How. Pr., 180; Wallack *vs.* Mayor, etc., 3 Hun., 96; S. C., 5 Thomp. & C., 322; *In re* Sackett Street, 4 Hun., 93; S. C., 6 Thomp. & C., 348; etc."

City of Lexington *vs.* McQuillan, 35 Amer. Decisions, p. 159.

See page 163:

"When shall a tax be levied? To what amount? Shall it be a capitation or property tax? Direct or indirect? *Ad valorem* or specific? And what classes of property are the fittest subjects of taxation? Are all questions wisely confided by our constitution to the discretion of the legislative department, subject to no other limitation than that of the moral influence of public virtue and responsibility to public opinion. But in some other respects, and so far as the power of taxation may be effectual without being thus limited, it is, in our judgment, limited by some of the declared ends and principles of the fundamental law. Among these political ends and principles equality, as far as practicable, and security of property against irresponsible power are eminently conspicuous in our State constitution. An exact equalization of the burden of taxation is unattainable and utopian. But still there are well-defined limits within which the practical equality of the constitution may be preserved, and which, therefore, should be deemed impassable barriers to legislative power. Taxation may not be universal, but it must be general and uniform. Thus, if

a capitation tax be laid, none of the class of persons thus taxed can be constitutionally exempt upon any other ground than that of public service; and if a tax be laid on land no appropriation land within the limits of the State can be constitutionally exempted unless the owner be entitled to such immunity in consequence of public service."

A tax on the interest paid by a corporation on its indebtedness, though collected from the corporation, is still a tax on the creditor, the corporation being only made use of as a convenient means of collecting the tax. (Cooley on Taxation, 2d ed., p. 231.)

In Haight *vs.* Railroad Company, 6th Wall., 15, it was held that the railroad company was authorized to deduct the tax of five per cent. from the interest coupons under the 22d section of the internal-revenue act of 1864. Haight, a citizen of New York, was the holder of bonds to the amount of one hundred thousand dollars issued by the Pittsburg, Fort Wayne and Chicago Railroad Company, secured by mortgage. The bonds and coupons were in the ordinary form. The defeasance clause of the mortgage provided that the principal and interest be paid at the times therein mentioned without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments, etc. The railroad company having retained five per cent. of the amount of coupons paid them, Haight brought this suit against it, contending that it could not deduct the taxes from the interest due him because it had, in the language of Congress, "contracted otherwise."

It was held by the court that the railroad company was authorized to deduct the taxes from the coupons when paid. In Railroad Company *vs.* Jackson, 7th Wall, p. 262, the revenue act of the State of Pennsylvania of 1864 was before this Court, and it was held that as the line of railroad was constructed through portions of two States, the State of Pennsylvania and the State of Maryland, that the former

could not collect the three mills' tax, as the State of Maryland might do the same, which would result in double taxation. It was held that if the line of railroad had been wholly within the State of Pennsylvania the mill tax could have been deducted from the interest coupons.

Mr. Justice Nelson in delivering the opinion of the court says:

"It is not to be denied as the courts of the State have expounded those laws that they authorized the deduction, and if any other objection existed against the tax the defense would fail. If this were an open question with him they concurred with the interpretation of the court below, which concurred with the views of the plaintiff's counsel. Nor shall we inquire into the competency of the legislature of Pennsylvania to impose this tax upon general principles, as we shall place the objection upon other and distinct grounds, though we must say that the tax upon the promissory note or bond given by the resident debtor and the withholding of the amount from the interest due the non-resident holder would seem to be a tax on such non-resident. It is not a tax on the money lent, because that belongs to the resident debtor, for which he is taxable. It is a tax on the security, the bond which is in the hands of the non-resident holder.

"In U. S. *vs.* Railroad Company, 17th Wall., 322, it was held that the revenue tax under the 122d section of the internal-revenue act of June 30, 1864, was upon the creditor and the corporation only used as a convenient means of collecting the tax."

In delivering the opinion of the court Mr. Justice Hunt says:

"The case of The Railroad *vs.* Jackson, 7th Wall., 262, decided in 1868, and Haight *vs.* The Railroad Company are authorities in support of the first proposition. In the first case mentioned Jackson, an alien non-resident, sought to